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[*Mandreger v. Detroit Edison Co.*](#), 88-ERA-17 (ALJ Sept. 7, 1990)

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U.S. DEPARTMENT OF LABOR
Office of Administrative Law Judges
525 Vine Street, Suite 900
Cincinnati, OH 45202

DATE ISSUED: September 7, 1990

Case No.: 88-ERA-17

In the Matter of

JAMIE H. MANDREGER
Complainant

v.

THE DETROIT EDISON COMPANY
Respondent

Appearances:
Bradley S. Mitseff, Esq.
John P. Baril, Esq.
For the Complainant

Stanley H. Slazinski, Esq.
Frederic E. Champnella, Esq.
For the Respondent

Before: Daniel J. Roketenetz
Administrative Law Judge

RECOMMENDED DECISION AND ORDER
Statement of the Case

This proceeding arises under the Energy Reorganization Act of 1974, as amended (42 U.S.C. Section 5851, et seq.), hereinafter called the Act. This legislation prohibits a Nuclear Regulatory Commission (NRC) licensee from discharging or otherwise discriminating against an employee who has engaged in activity protected under the Act. The Act is implemented by regulations designed

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to protect so-called "whistleblower" employees from retaliatory or discriminatory actions by their employers. (29 CFR Part 24) An employee who believes that he or she has been discriminated against in violation of the Act may file a complaint within 30 days after the occurrence of the alleged violation

On February 16, 1988, Jamie H. Mandreger, the Complainant in this case, filed a complaint of alleged discrimination. (Admin. Ex. 1)¹ In his complaint, the Complainant alleges that his employment with the Respondent was adversely affected because he engaged in activities protected by the Act. Pursuant to the implementing regulations, the complaint was referred to the United States Department of Labor, Wage and Hour Division, which, following investigation of the Complainant's allegation, found that the Complainant had been discriminated against because he engaged in certain activities protected by the Act. (Admin. Ex. 2) In its Letter of Findings, the Wage and Hour Division ordered the Respondent to reinstate the Complainant to his former position of tool and warehouseman, restoration of the sick leave he had used since his removal, compensation for lost overtime, payment of medical expenses incurred for independent medical tests and any attorney fees he may have incurred. Thereafter, the Respondent filed a timely request for a hearing before the Office of Administrative Law Judges. (Admin. Ex. 3)

Pursuant to Notice, a *de novo* hearing was held before the undersigned on August 10-12, August 16-17, August 31 and September 1, 1988 at Oak Park, Michigan. The parties were afforded full opportunity to be heard, to adduce evidence and to examine and cross-examine witnesses. Simultaneous post-hearing briefs were submitted and have been carefully considered.

Based upon the entire record, including my observation of the witnesses and their demeanor, the testimony and evidence presented at the hearing and the arguments of the parties, I make

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the following:

RECOMMENDED FINDINGS OF FACT

Timeliness of Complaint

The record discloses, and I find, that the Complaint was filed within the time limits set forth in the Act and the implementing regulations. (29 CFR Section 24.3)

Jurisdiction

The Respondent concedes, and I find, that the Office of Administrative Law Judges, United States Department of Labor, has jurisdiction to decide the issues at hand as raised pursuant to the Act. No findings are made herein as to whether the Respondent violated any safety regulations or in fact engaged in unlawful safety practices within the jurisdiction of other regulatory agencies, as such findings are beyond the scope of the inquiry in this proceeding.

The Respondent does not contest, and I find, that The Detroit Edison Company, the Respondent, is an employer within the meaning of the Act.

Issues Presented

1. Whether the Complainant's employment was discriminatorily terminated by the Respondent because he engaged in activities protected by the Act; and,
2. Whether the Complainant is entitled to any remedial relief.

Background

The following is an overview of this case based on the evidence presented in the light most favorable to the Complainant. A more detailed analysis of testimony deemed relevant is contained *infra*.

The Complainant, Jamie H. Mandreger, began working for Detroit Edison in 1983 and voluntarily

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transferred to the Fermi 2 nuclear power plant in May 1987. This new job was in the maintenance and modifications section. (Tr. 53-7) According to Mandreger, he made numerous safety-related complaints to management during October and November, but nothing was done to address his Complaints. Instead, the managers responded by telling him to hang in there, that they would get him trained. (Tr. 68-71)

Upon reaching his work station on December 4, 1987. Mandreger found 70 to 80 gauges tagged with internal contamination labels that were leaking Water. (Tr. 71-2) Mandreger became upset because he had no procedure with which to deal with the gauges. (Tr. 238, 456-57) He could not issue them and was concerned about contamination. (Tr. 238-39) Mandreger contacted his new supervisor, Donald Gardner, and the union steward William St. Clair at 7:55 a.m. (Tr. 74, 241, 268) Gardner said that he would look into it. Philip Budnik of Health Physics arrived, inspected the equipment, and told Mandreger not to touch or move the equipment. (Tr. 74-5) Shortly thereafter when Gardner returned and told Mandreger to move the equipment, Mandreger refused. (Tr. 75) Gardner then left saying that he would get to the bottom of the matter. (Tr. 77) At this point, Mandreger stated that he decided to go to the Nuclear Regulatory

Commission (NRC), and told St. Clair of his intention in the presence of Gardner. (Tr. 76) Mandreger called the NRC at 9:45 a.m. and asked for an official to come see him. (Tr. 78, 241) NRC notices at the plant stated that employees seeing alleged violations should first contact their supervisors and, if the employee believes that adequate corrective action isn't being taken, to then contact the NRC. (Tr. 242-43)

Later, feeling ill with a cold, Mandreger got a release to go home from the company nurse. He took the release to his supervisor, John Sutka. (Tr. 79) Sutka brought up Mandreger's calling the NRC. (Tr. 80) Angry, Sutka leaned over his desk and said, "Jamie, going to the NRC, its making us look bad They're not going to solve our problems,

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(Tr. 80) In addition, Sutka said that Mandreger shouldn't have gone to the NRC. (Tr. 80)

Over the weekend, Mandreger and his wife prepared a written report to the NRC. (Tr. 80) Mandreger failed to mention the Sutka incident to his wife that weekend and did not include it in the report to the NRC. (Tr. 436, 244-46) In the NRC report, however, he did mention an earlier, unrelated incident with Sutka. (Tr. 244-46) In addition, Mandreger did not mention the incident to the union steward immediately after its occurrence. (Tr. 249) Over the weekend, Mandreger stated that he was concerned about retaliation by Detroit Edison for his report. (Tr. 80, 354) Mandreger expected to be scrutinized more closely in the future. (Tr. 254) William St. Clair testified that Detroit Edison management had actively discouraged the filing of grievances and, in particular, Sutka had done so. (Tr. 460-64)

On Monday, December 7, 1987, Mandreger dropped off his report to the NRC, and later that day an NRC official came to Fermi 2 and discussed the report with Mandreger. (Tr. 88-9) Gardner saw this discussion. (Tr. 90) The equipment in question was gone by December 7. (Tr. 90)

Two days later, Don Gardner and Greg Osmulski reportedly confronted Mandreger about his NRC report. (Tr. 95) Gardner was a supervisor and Osmulski had some alleged supervisory authority. (Tr. 74 107) According to Mandreger, Gardner, said in a raised voice, Jamie, now, you come to me and we'll take care of your problems I'm here, we'll take care of it, we'll solve the problems. We can't have you going to the NRC." (Tr. 96) Gardner told Mandreger that going to the NRC was wrong. (Tr. 269)

From December 7 to January 22, Mandreger testified that periodic supervisory checks increased. (Tr. 100) Mandreger estimated that the checks were made twice as often as before the report. (Tr. 276) Mandreger claimed that supervisors never came up before the NRC report, sending

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only clerks. (Tr. 102) He also claims that Gardner's predecessor, Maglothlin, and Osmulski had come up. (Tr. 272) After the report, Sutka, came up, as well as Gardner. (Tr. 272) Mandreger felt Gardner's rounds were more than supervisory. (Tr. 275)

Mandreger's mother died on January 4, 1988. (Tr. 205) Mandreger's mother had been ill for several months prior to her death and Mandreger testified that he had visited her every couple of months and was relieved that when his mother finally died her suffering finally ended. (Tr. 52, 413- 14) Mrs. Mandreger, however, described Mandreger's relationship with his mother as "not close." (Tr. 414)

On or about December 20, there was a briefing on new procedures at which Gardner leaned over a table in Mandreger's direction and asked "And don't you have any questions, Jamie, especially you?" (Tr. 103) This meeting may have been the meeting which introduced procedures to deal with problems like the one Mandreger encountered. (Tr. 240) Several other employees were present and noticed Gardner's action. (Tr. 281-82) Mandreger had not been vocal at the meeting. (Tr. 283)

In late December, there was a meeting at which Mandreger asked Dixie Wells of Health Physics many questions regarding contamination. (Tr. 259, 261) He apparently got the information he was looking for. (Tr. 261)

On January 3, 1988, Osmulski, whom Mandreger claims to have supervisory authority, sarcastically said to Mandreger, "Yup, Jamie, the best thing you could have ever done was, gone to the NRC. Things are really changing around here; I'm glad to see that going on." (Tr. 104, 107)

Sometime around the beginning of the year, Mandreger was moved from the tool crib, his previous job station, to the warehouse. (Tr. 108-09) Supervisors rotate employees periodically to keep everyone current on the various jobs. (Tr. 283-84, 376) Mandreger did not expect his assignment to the hot tool crib to be permanent. (Tr. 375)

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On January 12, 1988, John Shafer, Sutka's replacement explained his job to the employees and explained how he would help out with some changes that were occurring. (Tr. 109) After the meeting, Shafer called Mandreger over and expressed sympathy for the death of Mandreger's mother. (Tr. 109) They also talked about Mandreger's problems with Sutka and the NRC. (Tr. 293-94) It is unclear who brought up the NRC. (Tr. 109-10, 295) At trial, Mandreger claimed Shafer brought it up (Tr. 110), but in deposition, this fact was not mentioned, and in deposition, Mandreger had stated that Shafer "probably knew already that I went to the NRC . . ." (Tr. 295) Also, at trial, Mandreger claimed Shafer had said "You're making us look bad. It's not right to go to the NRC, it's wrong" in a stern tone of voice. (Tr. 110) He had failed to mention this in deposition. (Tr. 296-97)

Mandreger claimed that he remained calm and kept his distance (Tr. 110), but Shafer claimed Mandreger "got in" his face. (Tr. 111)

Sometime in this period, Mandreger noticed some upper management personnel staring at him as he left work. He thought that they knew who he was. (Tr. 323)

On January 22, John Gardner allegedly accused Mandreger of not being at work from 11:00 a.m. to 12:15 p.m. (Tr. 111) In reality, Mandreger was on the job. At 11:00 a.m., Mandreger was in another warehouse getting materials to bring over to his warehouse. (Tr. 112-14) He left that warehouse at 11:04. (Tr. 117-22,) Traveling between the two warehouses was part of Mandreger's job. (Tr. 123) Upon his return, he helped some contract workers until about 11:40 a.m. (Tr. 125-26) He then finished unloading his own truck and had lunch around 12:20 p.m. (Tr. 126-27) After lunch, Gardner approached him, gave him some more work assignments, and then told Mandreger that he could not be unaccounted for for an hour. (Tr. 127-29) Gardner claimed to have come out at 11:00 a.m. and seen Mandreger's truck present and unloaded. (Tr. 129) Mandreger asked if Gardner was saying that he wasn't doing his job, and

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Gardner agreed. (Tr. 130) Mandreger explained what he had been doing and that he had witnesses. (Tr. 130, 309) They shook hands and Mandreger said that he would continue to give 100%. (Tr. 130) Gardner did not mention discipline. (Tr. 310) I note that Mandreger told Dr. Feldstein that Gardner had said he would discipline Mandreger for the absence. (Tr. 310)

Gardner returned to his office. Rather than letting the matter drop, Mandreger checked his witnesses. (Tr. 130) Mandreger confirmed his departure from the second warehouse with security and confirmed the time he assisted the contract workers. (Tr. 117-22, 383-98) Upon finding out that he was correct, Mandreger became very upset and went to Gardner's office. (Tr. 132-33) Mandreger entered the office and said, "Listen, before you start accusing me of not being on my job, you better have your p's and q's in order. . . . I got witnesses showing me that I was there on the job, security's got it down. . . . You keep this stuff up, I'll go to Channel 7, I'll expose you for what you're doing here." (Tr. 133)

Shortly thereafter, Gardner sent Church, a union representative, to talk to Mandreger about the problem. (Tr. 136) After Mandreger explained that he wanted to go to the NRC, the two went to the NRC office where Mandreger said that he felt he was being harassed. (Tr. 136) Later that day, Mandreger had a meeting with Ron May, John Shafer, Don Gardner, and union representative Church. (Tr. 136) Shafer said that they could not have Mandreger treating his frontline supervisor like he did and suggested that Mandreger see Jerry Nadolski and Dr. Smith at the Employee Assistance Program (EAP). (Tr. 137-38) Nadolski, and Smith thought Mandreger had a problem concerning his mother's death. (Tr. 139) They sent Mandreger home for the day and banned him from the site after he

left. (Tr. 142) Church later told him that if he did not go through EAP, disciplinary action would occur. (Tr. 143) Nadolski told Mandreger that he had to go through the EAP and got a release from Nadolski and Smith before he

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could return to work. (Tr. 142)

On Monday, January 25, Mandreger went to see Nadolski and Smith. They thought that Mandreger needed to see an outside independent psychiatrist, Dr. Qadir. (Tr. 144-47) Mandreger met with Qadir on January 27, 1988, and Qadir diagnosed Mandreger as having a bipolar affective disorder. (Tr. 147, 149) Smith and Nadolski said the only way Mandreger could return to work at Fermi 2 was if he took Lithium. (Tr. 149) When Mandreger disagreed with the diagnosis, Dr. Smith suggested that Mandreger get some other medical opinions. (Tr. 149) The effect of the other evaluations was unclear. Either a favorable evaluation would permit him to return to work or it would merely look in his favor to return to work at Fermi 2. (Tr. 150, 152)

During February and early March, Mandreger got four more evaluations, none of which indicated Mandreger had any kind of mental illness. (Tr. 150-53) Mandreger met with Smith and Nadolski several times, and they still thought Mandreger had a problem. (Tr. 151) Mandreger gave Smith the cover letters of the evaluations, as Smith told Mandreger that Mandreger's return to work was an administrative decision. (Tr. 157) Later, Detroit Edison rejected the four evaluations. (Tr. 157-58, 352) One of the evaluations that Detroit Edison rejected was from a doctor that Smith had recommended. (Tr. 351-52)

During this time, Mandreger used up all his sick and vacation days which strained his finances. (Tr. 153) Mandreger's HMO paid for the first evaluation, but Mandreger had to pay for the other three. (Tr. 153) During this time, also, Mandreger also found out that his wife was pregnant. (Tr. 166, 432)

Mandreger asked St. Clair to file a grievance, but St. Clair did not do so. (Tr. 158, 465-66) Mandreger also filed a complaint with the Department of Labor and a lawsuit in the Michigan courts. (Tr. 160)

On March 29, Gary Jamison, from the Union, telephoned Mandreger. Jamison told Mandreger

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that he could return to work if he came down to the union hall and signed some papers. (Tr. 159- 60) On the way down, Mandreger had a psychotic episode as a result of which he ended up in his hometown, Jackson, Michigan. (Tr. 160-63) Police found him and

brought him to the Foote East Hospital emergency room. The next day he was transferred to a mental institution, Coldwater. (Tr. 162- 63) Mandreger remained in Coldwater for 17 days. (Tr. 164)

Upon release from Coldwater, Mandreger contacted Detroit Edison. (Tr. 167) Detroit Edison suggested Mandreger have a follow-up psychiatric evaluation to ensure he was capable of returning to the job. (Tr. 167) Jamison said that if Mandreger got an independent examination indicating his ability to return to work, he could return. (Tr. 167-68) Because of the breakdown, however, it would be very difficult for Mandreger to return to Fermi 2. (Tr. 171) Mandreger's psychiatrist Dr. Pitts, said that there was no reason why Mandreger couldn't go back to his original place of employment and gave him a work release. (Tr. 172) Dr. Smith, however, declared Mandreger incompetent to work at Fermi 2. (Tr. 173) After several more weeks without pay, Mandreger was relocated to the River Rouge plant. (Tr. 174)

At the River Rouge Coal Plant, Mandreger did similar work, but the new job was inferior to his old one. The air was more polluted than at the Fermi 2 plant. (Tr. 174) In addition, the chances for advancement and overtime were much worse. (Tr. 175-77) The psychotic episode has hindered Mandreger's ability to work in the nuclear industry or at NASA. (Tr. 178 -79)

Remedially, Mandreger seeks \$14,555.57 in lost wages, ,633,908.00 in lost future income, future medical expenses of \$213,175, compensatory damages in the amount of \$750,000.00 and costs of \$3,494.85.

ANALYSIS OF TESTIMONY

Jamie Mandreger

In 1983, Mandreger began his employment with

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Detroit Edison. (Tr. 52) His initial assignment was at Fermi 2 in the nuclear security department. (Tr. 52-3) He remained in this position for two years. (Tr. 54) After a series of voluntary transfers within Detroit Edison, he returned to Fermi 2 on May 18, 1987 in the maintenance and modification department. (Tr. 56-7) Before assuming this position, Mandreger was given a series of tests, including a drug test and the Minnesota Multi-Phasic Personality Inventory (MMPI) test. (Tr. 56) Mandreger passed all of these tests. (Tr. 56)

Mandreger's job duties in the maintenance and modification department included tagging, classifying, and inventorying material and equipment coming into the plant. (Tr. 57) He also issued equipment to the proper departments. (Tr. 57) Since he began his employment with Detroit Edison, Mandreger had been evaluated every 6 months. (Tr. 58)

He was evaluated twice while he was in the maintenance and modification department, but he was not aware of what these two evaluations contained. (Tr. 59) However, Detroit Edison has stipulated that Mandreger was a good employee." (Tr. 13)

In 1966, Mandreger's mother was diagnosed with cancer. (Tr. 50) In March or May of 1986, she was informed that she was terminally ill with cancer and had 4 or 5 months to live. (Tr. 50) During this time, she also suffered from cerebellum ataxia which impeded her communication and coherentness. (Tr. 50) On January 4, 1988, she passed away. (Tr. 50) Mandreger testified that he had previously reconciled in his own mind that she was going to die. (Tr. 51) He testified that he was relieved when she died because for the last 4 or, 5 years of her life she was completely incapacitated, Mandreger's younger brother apparently took care of her during her illness. (Tr. 52)

Notwithstanding Mandreger's testimony, the admission report to Coldwater Regional Mental

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Health Center, where Mandreger was hospitalized after his psychotic breakdown, indicates that his mother's death greatly bothered, him. (Tr. 207) The preadmission screening information contains a statement by Mandreger's brother that "Mother died in January. His behavior started getting worse." (Tr. 207) Mandreger, however, is not sure which brother made this statement. (Tr. 207) Another statement in the hospital report says "Mother died 1-88. Patient began acting childlike soon after." (Tr. 208-09) Again, Mandreger does not know who made that statement or why. (Tr. 209) Moreover, Mandreger denies acting in a childlike manner after his mother's death or giving any such indication to his brother. (Tr. 373)

Before reaching the events of December 4, 1987 that led Mandreger to file a NRC complaint, there was an incident in the spring of 1987 relevant to the harassment alleged in December 1987 and throughout 1988. (Tr. 64) On June 1 and 2 of 1987, Mandreger was given directions to throw some new equipment into a dumpster. (Tr. 65) Mandreger told his supervisor, John Sutka, that he could write up procedures to save the company some expense. (Tr. 65) Sutka's response to Mandreger's suggestion was "You know, that's a good way to find yourself in cement shoes at the bottom of a river." (Tr. 66) Mandreger testified that he thought Sutka was serious. (Tr. 66) On cross-examination, defense counsel wanted to know why, if Mandreger believed the threat was serious, he did not immediately report it to any authority. (Tr. 218-19) Mandreger responded that he was still on a six month probationary period as a new employee, and he was afraid of financial repercussions. (Tr. 219)

Between June 2, 1987 and the events of December 4, 1987, Mandreger testified that "everything was okay" between Mandreger and his supervisor, Sutka. (Tr. 234) During the interim, however, the employees in the maintenance and modification department

reported having general problems with Sutka. (Tr. 67) Detroit Edison hired a private investigator, Vincent Piersante, to investigate

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and report on these problems. (Tr. 67)

In addition, after Mandreger completed his probationary period in October or November, he made four, five, or six suggestions to two other supervisors, Maglothin and May, about improving the procedures in the maintenance and modification department. (Tr. 68-70) There were promises from Sutka, Maglothin, and May that they were trying to remedy these problems. (Tr. 71) However, the specifics of Mandreger's suggestions were not explained on this record.

On Friday, December 4, 1987, Mandreger was assigned to the hot tool crib. (Tr. 71) He went to the back of this area that was designated as "clean" and found 78-80 gauges with magenta and yellow tags which meant that the equipment was internally contaminated. (Tr. 71-2) The gauges were improperly sealed with tape and were leaking water. (Tr. 72) Mandreger had not received any briefing on this equipment. (Tr. 73-4) Mandreger contacted his supervisor, Don Gardner, and the union steward, Bill St. Clair. (Tr. 74) Upon arriving in the hot tool crib, Gardner recognized there was a problem and left to see what was going on. (Tr. 74) While Gardner was gone, Phil Budnik of Health Physics came by the hot tool crib area. (Tr. 74) At Mandreger's request, Budnik checked the equipment with a hand frisker and told Mandreger that this equipment was the subject of a Deviation Event Report (DER). (Tr. 75) According to Mandreger, Budnik told him not to move the equipment until it was found to be "clean". (Tr. 75-6)

Later, Gardner returned and told Mandreger to move the equipment. (Tr. 75) Mandreger refused. (Tr. 75) He then turned to St. Clair and told him "If I have to, I'll make a point of this to the NRC." (Tr. 76) Gardner was in the vicinity and overheard this remark. (Tr. 76) Gardner seemed frustrated and walked away, saying "I'm going to get to the bottom of this." (Tr. 76-7) [Mandreger's version of the event leading to his filing of a NRC complaint conflicts with Gardner's testimony. Gardner testified that Mandreger referred to the NRC during

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the initial conversation. (Tr. 747, 793)] Mandreger then contacted the NRC site resident official and spoke with his secretary. (Tr. 78) He told her he was making an NRC complaint and would like someone to come down to the hot tool crib area. (Tr. 78) Later that day, December 4, Mandreger went into Sutka's office with a doctor's slip, requesting that he be sent home because he was not feeling well. (Tr. 80) Mandreger testified that Sutka brought up the NRC even though Mandreger had not told Sutka he had gone to the NRC. (Tr. 80, 82) Sutka told him "going to the NRC it's making us look bad and . . .

they're not going to solve our problems." (Tr. 80) Mandreger said Sutka seemed very upset and for the first time, Mandreger felt intimidated. (Tr. 80) Mandreger's testimony about this conversation conflicts with Sutka's testimony in which he stated that he never mentioned the NRC to Mandreger. (Tr. 1386-87) Although I was not particularly impressed with Sutka's overall credibility, I believe that given Mandreger's tendency for exaggeration, Sutka's version is the most plausible.

On the following Monday, December 7, 1987, Mandreger slipped a written complaint under the office door of the NRC resident. (Tr. 88) Later that same day, Parker of the NRC came down to the hot tool crib and discussed the report with Mandreger. (Tr. 89) The equipment was no longer on the floor when Mandreger arrived at work on Monday. (Tr. 89) Mandreger testified he was relieved but found it "coincidental" that it had been moved so quickly. (Tr. 263) Notwithstanding Mandreger's characterization that the equipment move was "coincidental", there is no evidence to show that it was moved other than in the ordinary course of business.

According to Mandreger, Gardner observed him talking with this NRC official. (Tr. 94) Mandreger testified that on December 9, 1987, after a morning briefing, Gardner and another person, Greg Osmulski, pulled him over. According to Mandreger, Gardner seemed upset. (Tr. 96) Mandreger

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stated that Gardner also told him that he "shouldn't go to the NRC ... we'll take care of it, we'll solve the problems." (Tr. 96) [Gardner, in his testimony, stated he did not recall telling Mandreger that going to the NRC was wrong, although he admitted that it was possible he made this statement. (Tr. 753, 807) Osmulski, who said he overheard part of the conversation, testified that he did not hear Gardner make such a statement. (Tr. 852-53)] Mandreger testified that he felt very embarrassed and intimidated by this conversation. (Tr. 97)

Mandreger also contends that prior to December 7, 1987, supervisors did not come up to the hot tool crib area to conduct periodic checks. (Tr. 102) Instead, supervisors sent clerks to perform these checks. (Tr. 102) After December 7, Mandreger noticed that supervisors, like Sutka, would come up and look over the area as if trying to come up with a new system. (Tr. 102-03) On cross-examination, Mandreger testified that he felt he was being scrutinized by Sutka during these periodic checks. (Tr. 274) However, Mandreger admitted that no other employees told him that he was being watched more closely. (Tr. 279) Nevertheless, Mandreger said that he knew in his heart he was being watched and his job was on the line because other employees who had gone to the NRC had a rough time at work. (Tr. 254-55, 279)

The next incident of alleged retaliation occurred on December 20. (Tr. 103-04) A briefing session was being conducted to discuss new procedures to be implemented in the hot tool crib area. (Tr. 103) According to Mandreger, at the conclusion of this session,

Gardner placed his hands on the table, leaned over in the direction of Mandreger and said, "and you don't have any questions, Jamie, especially you?" (Tr. 103) Mandreger testified that "[H]e was making a point to me that he wanted me to say something retaliatory." (Tr. 103) Mandreger said that he felt singled out. (Tr. 103)

Mandreger then recounted a remark by Greg Osmulski on January 3, 1988. (Tr. 104) According to Detroit Edison, Osmulski occupies a nonsupervisory

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position as a clerk; however, Mandreger testified that Osmulski was given authority to issue work orders. (Tr. 107) According to Mandreger, Osmulski told him that "the best thing you could have ever done, was gone to the NRC. Things are really changing around here, I'm glad to see that going on." (Tr. 104) Mandreger contends that Osmulski's mannerisms and tone indicated he meant the comment sarcastically. (Tr. 104) Osmulski, on the other hand, testified that he was sincere in this statement to Mandreger. (Tr. 872) Osmulski's testimony is summarized below. On this point, I found Osmulski to be a straightforward and credible witness. Given his explanation of events and his demeanor at the hearing, I believe that his statement to Mandreger was sincere and not meant to intimidate Mandreger.

When the NRC began its investigation of Mandreger's complaint, Mandreger was reassigned from the hot tool crib area to Warehouse "A", unloading trucks. (Tr. 109) On cross-examination, Mandreger admitted that periodically there were assignment changes. (Tr. 284) Moreover, during further examination of Mandreger, he admitted that upon receiving an assignment to work in the hot tool crib area he did not believe it was a permanent assignment. (Tr. 375) Also, when Mandreger was rotated out of the hot tool crib area in late December, everyone else in the maintenance and modification department was also given a new assignment. (Tr. 375-76) Mandreger testified that he did not believe this rotation was harassment; he only thought it was coincidental that the NRC was beginning its investigation. (Tr. 291, 376) There is no other evidence that Mandreger's reassignment was prompted by other than legitimate business considerations.

On January 12, John Shafer replaced John Sutka as supervisor. (Tr. 293) Shafer had a meeting with all his employees and explained that he was going to try to change the work place for the better. (Tr. 293) After the meeting, Shafer called Mandreger over. (Tr. 109) First, Shafer expressed his sympathies to Mandreger about the death of

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his mother. (Tr. 109) Then, according to Mandreger, Shafer brought up the NRC and said "you're making us look bad." (Tr. 109) Mandreger testified that Shafer, in a stern voice, said it was "wrong" to go to the NRC. (Tr. 110) Mandreger further stated that in an

equally stern voice, he told Shafer he believed, he was correct in going to the NRC. (Tr. 110) Mandreger's version of this conversation conflicts with Shafer's testimony that Mandreger brought up the NRC complaint himself, and that Mandreger appeared very irritated and agitated. (Tr. 630-31) Although I find it questionable that Shafer was not aware of Mandreger's NRC complaint prior to their incident, I nevertheless credit Shafer's assertion that Mandreger first mentioned the NRC complaint. Mandreger then explained that later he heard from St. Clair, the union representative, that Shafer was accusing Mandreger of getting "in his face" and yelling. (Tr. 111) Mandreger's testimony that he heard from St. Clair that he had yelled in Shafer's face conflicts with St. Clair's testimony. St. Clair testified that he was on vacation during this time period and that it was not until his return to work at the end of January that he was informed of the January 12 altercation between Mandreger and Shafer. St. Clair's testimony that he was on vacation was otherwise uncontradicted, except for Mandreger's testimony. St. Clair did not impress me as having any reason for misrepresenting that he was on vacation at the time of this incident. Accordingly, I credit his version of events. (Tr. 469) Mandreger denied that he got in the face of Shafer during the January 12 conversation. (Tr. 111) However, Mandreger later proved himself to have some aggressive tendencies. Thus, I am constrained to credit Shafer over Mandreger's denial.

On cross-examination, Mandreger admitted that he did not believe this conversation was "an incident of discrimination" at the time. (Tr. 297) It was not until Mandreger learned that Shafer was alleging that Mandreger got emotional and leaned into his face that Mandreger believed this was another incident of discrimination. (Tr. 298) At the time of

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the hearing, Mandreger still believed that his conversation with Shafer on January 12 was harassment. (Tr. 298)

The final incident before Mandreger's removal from Fermi 2 occurred on January 22, 1988. On that afternoon, Don Gardner confronted Mandreger and allegedly accused him of being absent from work between 1 1:00 a.m. and 12:15 p.m. (Tr. 111, 129) According to Mandreger's testimony, Gardner told him that he had seen the unloaded truck at 1 1:00 a.m., but he could not find him. (Tr. 129) Mandreger admitted that during this conversation, Gardner did not indicate he was going to take any disciplinary action against him. (Tr. 379) Moreover, Mandreger acknowledged that at the end of this conversation, he shook hands with Gardner. (Tr. 313, 379) According to Mandreger, though, he was trying to bring peace between himself and Gardner. (Tr. 379) I note that Gardner contrary to Mandreger's contentions, never accused Mandreger directly of not doing his job. It appeared that Gardner simply could not find Mandreger for a period of time. Moreover, the matter seemed to be completely resolved when they shook hands. Why Mandreger persisted in vindicating himself is inexplicable except as possible manifestation of his underlying mental illness which was later diagnosed.

Mandreger explained that after this conversation, he was very upset by the accusation and believed he had really done something wrong. (Tr. 131-32) He then confirmed with nuclear security that he had left Warehouse B at 11:04 a.m. (Tr. 314) He also contacted the three contractors he was working with in Warehouse A between 11:00 a.m. and 12:00 p.m. (Tr. 314). Mandreger testified that he then went into Gardner's office and told him "before you start accusing me of not being on my job, you better have your 'p's' and 'q's' in order.... I got witnesses showing me that I was there on the job, security's got it down . . . you keep this stuff up I'll go to Channel 7, I'll expose you for what you're doing here." (Tr. 133)

Next, Mandreger returned to his work place. (Tr.

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135) Later, Gardner came back to Mandreger's work area with Church, a union representative with another group, but who was assuming St. Clair's duties because St. Clair was not at work on that day. (Tr. 135) [This supports St. Clair's assertion that he was on vacation on this date.] Mandreger relayed the story to Church and then both t to Mike Parker, the NRC resident. (Tr. 136) Mandreger testified that he told Parker of the accusation and that he felt he was being harassed. (Tr. 136)

From there, Church and Mandreger went to a council room where supervisors May, Shafer, and Gardner were present. (Tr. 136) Mandreger testified that he believed that the purpose of this meeting was to discuss his behavior with Gardner. (Tr. 136) At the meeting, Shafer told Mandreger that he was being sent to the Employee Assistance Program (EAP) for an emotional evaluation. (Tr. 140-41) When the meeting concluded, Shafer instructed Mandreger to punch out for the day. (Tr. 142) Mandreger later learned from a friend that he had been banned from the site. (Tr. 142)

On Monday, January 25, Mandreger went to the EAP and reported, to Mr. Nadolski, a social worker, in accordance with Shafer's instructions. (Tr. 143) Mandreger testified he had a negative feeling about going to the EAP because he felt he was performing his job. (Tr. 143)

Mandreger met with Nadolski at the, EAP, for over an hour. (Tr. 143, 145) According to Mandreger's testimony, at the end of the conversation, Nadolski indicated that he believed Mandreger was fine and could get back to work. (Tr. 144) Before Mandreger was released for lunch, Nadolski informed him that he would need to return that afternoon to talk to Dr. Smith, who was a physician, but not a psychologist or psychiatrist. (Tr. 145)

After lunch, he spoke with Dr. Smith for over an hour. (Tr. 145-46). At the end of this interview, Nadolski and Smith told Mandreger that they thought there was a problem, and they wanted him to get an outside opinion. (Tr. 146-47) Mandreger

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testified that he felt as if Nadolski had baited him by earlier indicating he was fine and then four hours later agreeing that he should see an outside psychiatrist. (Tr. 147)

Mandreger was then referred to Dr. Qadir, a psychiatrist, and met with him on January 27. Mandreger talked with Dr. Qadir for about an hour and recounted the incidents leading to the filing of an NRC complaint and incidents resulting in his referral to Dr. Qadir. (Tr. 148) On cross-examination, Mandreger testified that he told Qadir that he would appreciate an extra copy of his evaluation, if favorable, because he wanted to include it in an application for employment at NASA. (Tr. 211-12) Mandreger also told Qadir that he had filed a report with the Michigan State Police regarding a threat Sutka had made to him on June 2, 1987. (Tr. 221) In fact, Mandreger had not filed such a report until January 22, 1988. (Tr. 222-23)

A couple of days later, Dr. Smith contacted Mandreger at home and told him there was a problem. (Tr. 148) Mandreger met with Nadolski and Smith, and they told him that he had been diagnosed as having a bipolar affective disorder. (Tr. 149) Further, they told Mandreger that he could only return to Fermi 2 if he began taking Lithium. (Tr. 149) According to Mandreger's testimony, he objected and Dr. Smith told him to get a second and third opinion. (Tr. 149) This testimony conflicts with the testimony of Mrs. Mandreger, Nadolski and Smith. Mrs. Mandreger explained in her testimony that she accompanied her husband to a meeting with Nadolski, where Nadolski informed Mandreger that he would have to begin taking Lithium or get independent medical opinions. (Tr. 410) Nadolski, on the other hand, testified that in a meeting with Mandreger and his wife, Mandreger told him that he was going to gather independent medical opinions, at which point Nadolski made a note to discuss this matter with Dr. Smith. (Tr. 1127) Finally, Dr. Smith recounted that Mandreger requested time from him to seek other medical evaluations. (Tr. 1271) Who first suggested getting additional medical evidence

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is not critical to resolution of the issues in this case. It simply doesn't matter who first mentioned it.

Mandreger then proceeded to get four independent psychological examinations. (Tr. 151) Mandreger paid for three of these evaluations, and his HMO paid for the evaluation with Dr. Pitts. (Tr. 153) According to Mandreger, he believed that all the reports indicated that he had no mental illness and that he was fit to return to work. (Tr. 153)

Mandreger testified that after his removal from Fermi 2 on January 22, this period was the worst time in his life. (Tr. 153-54) He exhausted all his sick days and vacation days.

(Tr. 154) Moreover, his relationship with his wife and children became very stressful.
(Tr. 154)

Around March 10, 1988, Mandreger took the four reports to Dr. Smith. (Tr. 156) Mandreger only took the cover letters from the reports because, according to Mandreger, Dr. Smith had told him that only the cover page was necessary. (Tr. 155) At this meeting with Dr. Smith, Mandreger was told that an administrative decision would be made. (Tr. 157) Mandreger testified that he was "shocked" by this information because Smith had previously told him he, personally, would make the final decision. (Tr. 157) Mandreger's version of the conversation conflicts with both the testimony of Nadolski and Smith. Nadolski, in his testimony, recalled that on March 10, when Mandreger presented three doctors' recommendations, Dr. Smith informed Mandreger "that medical would have to review the case further." (Tr. 1130) Smith, however, testified that he explained to Mandreger that he would need additional time to contact these doctors. (Tr. 1275) Thus, although there is some conflict in the testimony, it is not necessary to resolve this rather inconsequential point of evidence.

According to Mandreger, Dr. Smith later told him the reports were rejected. (Tr. 157) I note however, that Dr. Smith, in his testimony, explained that plans were underway with the union

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for Mandreger to sign medical release forms when Mandreger suffered his psychotic breakdown. (Tr. 1277) Mandreger, on the other hand, testified that Dr. Smith also told him that he believed he was incapacitated to work at Fermi 2. (Tr. 157) Mandreger testified that at this time he had been out of pay now for 2 to 3 weeks. (Tr. 158)

Mandreger then asked Bill St. Clair to file a union grievance for him. (Tr. 158) According to Mandreger, on March 29, Gary Jamison, the union local vice president, contacted him at home and asked him to come down to the union hall and sign some papers because the union had struck a deal with management to have him return to work, (Tr. 159-W) [This testimony is inconsistent with Jamison's testimony. Jamison stated that in this conversation he requested Mandreger to only come down to the union hall for the purpose of signing some medical release forms. (Tr. 1069- 70)] On cross-examination, Mandreger also testified that he doesn't recall making a statement to Jamison that he had information about Fermi 2 which would "blow the lid off" the national presidential elections. (Tr. 342)

Jamison's call that an alleged deal had been worked out with management occurred after Mandreger had filed a suit in Michigan State Court and a complaint with the U.S. Department of Labor. (Tr. 160) On the way to the union hall to sign the papers, Mandreger testified that he felt like he just had "to get the hell away." (Tr. 161) He drove past the union hall and back to his hometown of Jackson, Michigan. (Tr. 161)

Mandreger testified that he remembered going to his brother's home, taking his brother's dog, and going for a walk. (Tr. 161) Later, he realized he was lost. (Tr. 161) He remembered breaking into a home because he was cold. (Tr. 161) When the police came to the home, Mandreger was sent to the Foote East Hospital and then to Coldwater, a mental institution. (Tr. 162-63) He spent 17 days in Coldwater. (Tr. 164) He testified that he was angry, frustrated and hurt. (Tr. 164) He was kept on heavy medication. (Tr. 164) Upon release

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from Coldwater, he began seeing Dr. Pitts. (Tr. 167)

Gary Jamison contacted Mandreger after his release and told him that he had to return to work by June 19 or Detroit Edison could terminate him. (Tr. 167-168) Mandreger testified that he told Jamison he wanted to return to Fermi 2, but Jamison said that would be difficult. (Tr. 171) Mandreger also testified that Dr. Pitts had told him there was no reason why he couldn't go back to Fermi 2. (Tr. 172) However, I note that Dr. Pitts ultimately concluded that Mandreger should not return to work at Fermi 2.

Dr. Pitts gave Mandreger a work release which he, in turn, gave to Dr. Smith. (Tr. 172-73) Mandreger also gave Dr. Pitts permission to contact Dr. Smith. (Tr. 172) Dr. Smith informed Mandreger that in his opinion, Mandreger was not fit to return to Fermi 2. (Tr. 173) On May 16, Mandreger was given a position at River Rouge, a coal burning plant. (Tr. 174) Mandreger testified that there was no room for advancement at River Rouge. (Tr. 175) Moreover, although the fringe benefits and base salary were the same as Fermi 2, there was less overtime according to him. (Tr. 175-76)

C J. King

Clarence J. King is an employee of Bartlett Nuclear; however, his job requires him to spend a lot of time at Fermi 2. (Tr. 383-84) He was one of the three independent contractor employees who was present near Warehouse A on January 22, 1988. (Tr. 385) King testified that he saw Mandreger between 11:00 - 11:45 a.m. on January 22, 1988, and that Mandreger helped him and his fellow coworkers move some empty drums.

In addition, King testified that Mandreger came back to them at around 1:00. (Tr. 388) Mandreger, seemed concerned and explained to King and his two coworkers that his supervisor had accused him of not working. (Tr. 388) Mandreger asked them to confirm his whereabouts between 11:00 - 11:45. (Tr. 389) Finally, King, testified that Don

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Gardner did not ask them about Mandreger's presence at anytime during the day of January 22, 1988. (Tr. 391)

Detroit Edison stipulated that the testimony and cross examination of the other, two employees of Bartlett Nuclear would be the same as King's testimony. (Tr. 399) With this stipulation, plaintiff's counsel did not call Mr. Gillsdorf or Mr. Fisher, the two coworkers of Mr. King. (Tr. 400)

Although this testimony supports Mandreger's assertion that he was not absent from his job on the day in question, it does lime to buttress his contention that the apparent mistaken belief that he was absent by his supervisor was in any way a form of unlawful discrimination against him.

Susan Mandregar

Susan Mandreger is the wife of Jamie Mandreger. (Tr. 404) Mrs. Mandreger has known Mandreger for 10 years, and prior to the incidents in December 1987, she had not known him to have any history of psychiatric problems. (Tr. 404-05)

Mrs. Mandreger testified that she noticed a progressive deterioration in her husband's behavior after he filed the NRC complaint, even though he insisted that he felt fine. (Tr. 405, 440) She further stated that, when she was helping him write the NRC complaint during the weekend of December 4, 5, and 6, Mandreger told her that "they" (apparently meaning Detroit Edison) were going to be after him for this. (Tr. 426) However, Mrs. Mandreger does not remember her husband mentioning the comments Sutka allegedly made when Mandreger told him that he was going home ill on the afternoon of December 4 (i.e., going to the NRC is making us look bad). (Tr. 427)

According to Mrs. Mandreger, her husband did tell her about the incident with Don Gardner when he told Mandreger that he should not have gone to the NRC, but should have come to him. (Tr. 428) Mrs. Mandreger also remembers her husband telling her that he had been singled out in a briefing meeting and made to feel intimidated. (Tr.

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428) Mrs. Mandreger also said her husband told her that he felt like his supervisors were watching him closely. (Tr. 429) In addition, Mrs. Mandreger recalls her husband telling her that his supervisors were angry at him for going to the NRC. (Tr. 429) During the time between December 7, 1987 and January 22, 1988, Mrs. Mandreger watched her husband become very anxious, nervous, and edgy. (Tr. 406)

On January 22, 1988, Mandreger came home from work very angry and upset. (Tr. 437) According to Mrs. Mandreger, he told her that he had been accused of not doing his job. (Tr. 408, 437) He also told her that he had raised his voice to his supervisors. (Tr. 439) Mrs. Mandreger testified that she understood her husband was being sent to EAP, because at Fermi 2 employees could not yell and get emotionally upset with their bosses. (Tr. 438)

Mrs. Mandreger testified that after January 22, when her husband was banned from the site, he became very tense and kept to himself. (Tr. 407) Mrs. Mandreger believes that his work situation caused her husband's behavior to change. (Tr. 408) She explained that he felt like he was being singled out, harassed, and watched. (Tr. 408)

Around the first or second week of February, Mrs. Mandreger accompanied her husband to a meeting with Mr. Nadolski, the Detroit Edison social worker. (Tr. 409) Nadolski explained to Mandreger that he was going to have to take Lithium in order to get clearance to return to work. (Tr. 410) According to Mrs. Mandreger, when her husband refused, Nadolski said that he should then get some independent medical opinions. (Tr. 410)

Mrs. Mandreger believed that these four independent evaluations had concluded that Mandreger had some work-related problems, but not any mental problems. (Tr. 410-11) As Mrs. Mandreger understands it, Detroit Edison rejected these reports. (Tr. 411-12)

Mrs. Mandreger also testified that her husband was not close to his mother during the last 5

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years, of her life. (Tr. 414) Mrs. Mandreger said that Mandreger's youngest brother took care of his mother, and that he only saw his mother, once every couple of months. (Tr. 414) In Mrs. Mandreger's opinion, her husband was relieved by his mother's death. (Tr. 415)

Even though the records of Coldwater indicate that Mrs. Mandreger had discussions with the social workers, she denies any such discussions occurred. (Tr. 432-33) She also denies ever hearing that her husband was behaving in a "childlike" manner after the death of his mother. (Tr. 435) In fact, she testified that he handled the death of his mother very well. (Tr. 436)

Mrs. Mandreger testified that the incidents of December 1987 and subsequent events still affect Mandreger. (Tr. 421) According to her, her husband is still angry and mistrustful. (Tr. 421) Their marriage and family life has not yet returned to normal. (Tr. 421-23) In addition, after Mandreger was released from Coldwater, there were four weeks when he did not receive any pay, and this created a financial strain on the family. (Tr. 422)

William St. Clair

Mr. St. Clair is employed by Detroit Edison as a tool and warehouse leader at Fermi 2. (Tr. 449- 50) He is also the union steward for employees, and like Mandreger, was employed in the stores department. (Tr. 450)

St. Clair testified that he worked closely with Mandreger for several weeks throughout October and November 1987, and that he never noticed Mandreger exhibiting any unusual behavior. (Tr. 451-52) Between December 4 and December 22, before he went on vacation, Mandreger told him on several occasions that he felt something was wrong, and that he felt he was being singled out. (Tr. 464-66) However, St. Clair doesn't remember Mandreger giving him any specifics. (Tr. 466)

During his testimony, St. Clair said that he had observed several incidents where employees filed a grievance or complaint and supervisors reacted negatively to them for this action. (Tr. 460-61) St.

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Clair also recounted incidents where Mr. Sutka and Mr. Shafer discouraged him from filing grievances for employees. (Tr. 461, 463)

St. Clair testified that on January 22, 1988, Mandreger called him and told him that he had been removed from Fermi and explained the "particulars." (Tr. 465) When St. Clair returned from vacation, Shafer told him that Mandreger had been removed from the site for acting erratically on January 12 and 22. (Tr. 469)

Around March 3, 1988, Mandreger called St. Clair and asked him to file a grievance for him. (Tr. 465) St. Clair did not do so. He failed to remember to file a grievance, and as of the date of the hearing, St. Clair still has not filed a grievance on behalf of Mandreger. (Tr. 465)

Deposition Testimony Dr. Feldstein

Dr. Feldstein is a Board-certified psychiatrist. (Dep. of Dr. Feldstein, p. 5) He conducted an independent examination of Mandreger on July 13, 1988 (Dep. p. 6)

Dr. Feldstein concluded that Mandreger suffered from brief reactive psychosis with mixed emotional features of anxiety, depression, and distrust. (Dep. pp. 10, 12) He disagreed with Coldwater's diagnosis of a bipolar affective disorder. (Dep. p. 11) Nonetheless, he agreed that Mandreger would require long-term psychiatric treatment, although Dr. Feldstein would take Mandreger off lithium if he was his patient. (Dep. pp. 15, 66) Dr. Feldstein was questioned on his diagnosis because DSM III R, a reference text, defines brief reactive psychosis in a manner that does not coincide with the characteristics exhibited by Mandreger. (Dep. pp. 98-160)

Feldstein also concluded that there was a significant relationship between the stress Mandreger experienced at work and his psychiatric disorders. (Dep. p. 28) According to Feldstein, Mandreger is a very conforming individual who strives to do the "right thing." (Dep. p. 17) Thus, experienced at work upset

Mandreger deeply. (Dep. p. 32) Dr. Feldstein disagrees with Dr. Qadir's conclusion that Mandreger's psychosis is attributable to his mother's death. (Dep. p. 37) According to Dr. Feldstein, Dr. Qadir dismissed Mandreger's work stressors. (Dep. p. 37) Dr. Feldstein also contends that Mandreger's feelings of persecution and harassment were not delusions, but fear based on relevant real events. (Dep. pp. 103-04)

On cross-examination, counsel for Detroit Edison pointed out that Mandreger told Dr. Feldstein that a supervisor, Sutka, threatened his life; however, Mandreger does not mention to him when this threat occurred. (Dep. pp. 75-6) In addition, Mandreger told Feldstein that after he filed the NRC complaint, a supervisor confronted him 10 or 12 times, criticizing him for going to the NRC. (Dep. p. 75) Mandreger admitted in his cross-examination that this statement to Dr. Feldstein was an exaggeration and there is nothing in the record which would support the information Feldstein was given. (Tr. 334) Mandreger also testified that he told Dr. Feldstein that he, was going to lose his job, even though this was simply Mandreger's own feeling and no one ever told that to him. (Tr. 336)

Based on the exaggerates events described by Mandreger to Dr. Feldstein, I find that his conclusions as to Mandreger's underlying mental condition are highly questionable. Therefore, I place little reliance on his medical opinion.

Dr. Elissa Benedek

Dr. Benedek, a psychiatrist, examined Mandreger for four hours. (Tr. 492, 494) She testified that during the interview Mandreger was at various times agitated, excited, verbose, and failed to answer questions in a straightforward manner. (Tr. 496-97) Although Dr. Benedek admitted that his long day on the witness stand and his weariness of psychiatric evaluations were factors contributing to his pressured dialogue, she stated that Mandreger's behavior was well beyond the bounds of

normal, even taking these factors into account. (Tr. 576-77)

Dr. Benedek diagnosed Mandreger as suffering from bipolar affective disorder. (Tr. 502) She agreed with the diagnoses made by Dr's. Qadir and Pitts, and the Coldwater Mental Health Hospital which all concluded that Mandreger was a bipolar manic. (Tr. 505) Furthermore, she disagreed. with the diagnoses of Dr's. Ketai, Tiziani, and Ritenour which opined that Mandreger suffered from an adjustment reaction with the psychosocial stressor being work. (Tr. 505-06) She testified that she believed this later diagnosis was made because the doctors failed to conduct a longer interview with Mandreger and failed to speak with his family members. (Tr. 506)

Moreover, Dr. Benedek stated that in her opinion work was not a stressor for Mandreger. (Tr. 565) She stated that due to his illness, Mandreger perceived work as a stressor simply because he misperceived his bosses' statements. (Tr. 549) According to Dr. Benedek, the stressors for Mandreger were not management's conversations with him or management's rejection of his doctor's slips; instead, the stress stemmed from Mandreger's misperception of management. (Tr. 562- 63) Ironically, Dr. Benedek does not deny that management referred to the NRC in conversations with Mandreger. (Tr. 609) As she understands it, both Mandreger and management agree that certain supervisors told him that going to the NRC was undesirable. (Tr. 535-36) Benedek testified that Mandreger, however, misperceived how these comments were meant. (Tr. 535) Even though Benedek testified that there were no occupational stressors affecting Mandreger, she admitted, on further examination that the involuntary medical leave and loss of income constituted stressors for him. (Tr. 565, 606)

According to Dr. Benedek, the stressors culminating in Mandreger's illness were his mother's death and his wife's unplanned pregnancy. (Tr. 499-500) Although Mandreger told Dr. Benedek that his mother's death was a relief to him, she

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believes that Mandreger reacted strongly to his mother's death because during the psychiatric interview, he did not express any sad or mixed feelings to her passing. (Tr. 547) She opined that Mandreger felt guilty for not taking care of his mother in her final years. (Tr. 547) Dr. Benedek also saw trauma in Mandreger's formative years caused by the death of his father and the diagnosis of his mother's illness. (Tr. 531)

In Dr. Benedek's opinion, the combination of Mandreger's altercations with Mr. Shafer on January 12 and with Gardner on January 22 justified a psychiatric evaluation. (Tr. 510) Although Benedek admitted that people sometimes do unusual things which do not necessarily indicate the need for counseling, she explained that there were a variety of incidents which suggested Mandreger's need for help. (Tr. 541) Dr. Benedek also stated that if a person, was working in a non-nuclear setting and exhibited Mandreger's behavior, she would have waited for additional incidents before concluding that the person needed counseling. (Tr. 581) In addition, Benedek testified that she knows more than the average layperson about nuclear security because she participated in a study of nuclear plants which found that mentally unstable persons are the greatest threat to nuclear safety. (Tr. 58, 610-11) However, Dr. Benedek admitted that she was never in a nuclear plant when conducting this study nor does she know which restricted areas Mandreger could enter. (Tr. 582, 612)

Although I disagree with Dr. Benedek's general conclusion that work did not serve as a stressor, to Mandreger, I find that her conclusions as to Mandreger's misperceptions in the work environment make sense. Moreover, her observations in this regard seem to be supported by events narrated by other non-medical witnesses which detailed Mandreger's behavior during the time in question.

On January 11, 1988, Mr. Shafer became the general supervisor of nuclear materials, replacing John Sutka. (Tr. 622) Although Shafer learned of his appointment approximately 2 weeks before January 11, he testified that he did not meet with either Mr. Gardner or Mr. Root to discuss departmental affairs. (Tr. 651) However, Shafer stated that he had heard there were union-management problems in this department, as well as an ongoing investigation of these problems. (Tr. 680) He said he had learned about these problems through the Fermi grapevine, which he testified was "a wonderful grapevine." (Tr. 680) Nonetheless, Shafer said that he was not aware and had not inquired into any pending NRC complaints in the department prior to assuming his new supervisory position. (Tr. 651)

Shafer did drop by Gardner's office about a week or two before January 11. (Tr. 675) According to Shafer, the purpose of his conversation with Gardner was just to say "Hi." (Tr. 676) During this informal conversation, Gardner informed Shafer that Mandreger's mother had passed away. (Tr. 677) In early testimony, Shafer said Gardner brought it up out of the blue. (Tr. 677) In later testimony, however, Shafer said that he asked Gardner how things were going, and Gardner complained of being short-handed that day because Mandreger was attending his mother's funeral. (Tr. 711)

On January 12, Shafer held an informal meeting of all his employees on duty. (Tr. 624) At this meeting, Shafer mentioned that he was aware of the problems between union and management, and he wanted these problems to be put in the past. (Tr. 627) When the meeting was adjourned, Shafer called Mandreger over to express his condolences about his mother's death. (Tr. 628) In his testimony and in his report that he wrote concerning the January 12 incident, Shafer said that during this conversation he told Mandreger that he was aware of his past problems with management and wanted to help. (Tr. 630, 720) Shafer, however, testified that this comment referred only to general union-management problems. (Tr. 720- 21)

According to Shafer, at this point, Mandreger came within two or three inches of his face and said he had had a lot of problems in the past, and the supervisors had ignored him, that is why he made a 16 page complaint to the NRC. (Tr. 630- 31) Shafer testified that prior to this statement by Mandreger, he had no knowledge of any NRC complaint. (Tr. 631) Shafer also denied that he told Mandreger he should not have gone to the NRC because it makes Detroit Edison look bad. (Tr. 678) Shafer's testimony, about his conversation with Mandreger conflicts with Mandreger's testimony. Mandreger testified that Shafer brought up the NRC, and in a stern voice, told him that going to the NRC was wrong and was making Detroit Edison look bad. (Tr. 109-10) As earlier noted I credit Shafer's version that Mandreger first mentioned the NRC. That being so, even if Shafer

told Mandreger that going to the NRC was wrong, such a statement was probably more in the nature of a defensive response rather than an attempt to harass or intimidate Mandreger.

Shafer testified that he was startled by Mandreger's behavior on January 12. (Tr. 630) However, when the conversation ended, Shafer did not feel uncomfortable. (Tr. 721) In fact, they shook hands. (Tr. 721) According to Shafer, this incident alone did not constitute aberrant behavior to the extent that EAP should have been notified about Mandreger. (Tr. 656) Shafer testified that he informed the union steward, Bill St. Clair, of this incident several weeks later when St. Clair returned from vacation. (Tr. 633) [This testimony conforms with St. Clair's testimony (Tr. 469), but conflicts with Mandreger's testimony. (Tr. 111) As noted previously, Mandreger's version is not credited.]

Between January 12 and January 22, Shafer did not hear anything about Mandreger, and he assumed everything was fine. (Tr. 671) On January 22, Shafer received a call from Gardner concerning Mandreger. (Tr. 634,) According to Shafer's testimony, Gardner told him that he hadn't been able to locate Mandreger for approximately an hour. (Tr. 634-35) When he did finally find Mandreger

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to ask him about his whereabouts, Mandreger explained where he was and that he considered that the end of the matter. (Tr. 634-35) However, a short time later, Mandreger "came forming into" Gardner's office, yelling that he had accused him of being absent from work, that he wasn't, and he could confirm it. (Tr. 635) Shafer told Gardner to locate a union steward and come to his office with him and Mandreger. (Tr. 635)

According to Shafer, at that point, he recalled the January 12 incident with Mandreger and tied that incident together with the incident Gardner had just recounted. He then decided to contact EAP. (Tr. 639) Shafer testified that as a supervisor he had gone through training sessions, called behavioral reliability training, in which supervisors are taught to notice aberrant behavior. (Tr. 617-18) According to the session, if a supervisor observes erratic behavior, he is to call EAP and relay the situation, then wait for EAP's advice. (Tr. 620) [William Roskind, the Director of Psychological Services at Detroit Edison, confirmed this testimony that Shafer had received behavioral reliability training. (Tr. 1318, 1333) Roskind explained that the NRC requires supervisors to have training in how to monitor workers for aberrant behavior. (Tr. 1323-24) Roskind testified that if a supervisor is "really concerned" about an employee's behavior, he is instructed in this session to contact EAP or medical and ask what action is appropriate. (Tr. 1328)] Shafer admitted that it is not uncommon for employees to have altercations with supervisors, and that such employees are not sent automatically to EAP. (Tr. 698-99) In addition, Shafer admitted that he had never previously sent an employee to EAP because of an altercation with a supervisor. (Tr. 699) Generally, in prior incidents with other employees, there was a fact-finding session with the union where disciplinary action was considered. (Tr. 700-

01) Thus, Shafer acknowledged that Mandreger's altercation had been handled differently. (Tr. 701) However, Shafer denies ever planning or plotting to treat Mandreger differently. (Tr. 632) According to

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Shafer, the time proximity between Mandreger's altercation on January 12 and his altercation on January 22 indicated the need for professional advice. (Tr. 701-03) Although disparate treatment of employees may constitute an indicia of an unlawful motive, I find on the particular facts of this case that Shafer's actions were justified.

Shafer testified that Gardner told him he was scared by Mandreger's behavior. (Tr. 706) Moreover, Shafer testified that he did not tell Nadolski at EAP that Mandreger was a threat to himself, or his coworkers, or the plant. (Tr. 709) [Even though this testimony conflicts with Mr. Nadolski's testimony that Shafer told him that Mandreger was a threat to himself or others, resolution of this conflict one way or the other does not affect the ultimate outcome of this case. (Tr. 1141)]

A long time elapsed before the meeting commenced between Mandreger, Shafer, Gardner, and Church, the union steward. (Tr. 636) Shafer testified that he later learned that Mandreger had insisted on going to the NRC before the meeting. (Tr. 636)

At the meeting, the only issue to be handled was Mandreger's behavior toward Gardner. (Tr. 637-38) Shafer did not intend to deal with Mandreger's alleged one hour absence. (Tr. 638) At this meeting, Shafer did not contemplate discharge, demotion, or suspension of Mandreger. (Tr. 717) Shafer told Mandreger to see a counselor at EAP. (Tr. 638) Shafer testified that Mandreger was given no alternatives. (Tr. 703)

According to Shafer, the next information he received was that Mandreger's key card had been pulled on the authorization of the medical department. (Tr. 641) On several occasions thereafter, Shafer contacted Dr. Smith and Nadolski concerning when Mandreger would be returning to work. (Tr. 662) Shafer acknowledged that total confidentiality is promised if an employee goes to the EAP. (Tr. 659) According to Shafer, he did not inquire as to why Mandreger was not coming back to work nor was he told any reason. (Tr. 662) Shafer testified that in late February or early March, Dr.

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Smith informed him that Mandreger would not be returning to work in the near future. (Tr. 642, 674) Shafer further testified that in late April or early May, he learned from Dr. Smith and Dick Martin of union relations that Mandreger would not be returning to Fermi 2. (Tr. 645-46)

Shafer stated that he also had contact with Mandreger after January 22. (Tr. 663) Mandreger expressed his desire to come back to work and his hope that his independent medical opinions would allow him to be reinstated. (Tr. 663)

Additionally, Shafer was involved with Mandreger's leave and sick pay. (Tr. 646) On April 14, 1988, Shafer sent Mandreger a letter stating that he was on medical leave from March 22, 1988 until June 19, 1988. (Tr. 643) Shafer testified that from January 22, 1988 until March 22, 1988, Mandreger was paid out of the sick bank and extended disability so that he was receiving the same base salary. (Tr. 643-44) After March 22, 1988, Mandreger was on approved leave of absence without pay, but with benefits. (Tr. 645) Shafer apparently was not involved in Mandreger's relocation at the River Rouge Plant. (Tr. 646)

Donald Gardner

On November 30, 1987, Don Gardner was transferred from his previous position with Detroit Edison to the warehouse at Fermi 2 where he assumed the job as acting materials supervisor below Sutka. (Tr. 732, 737) Gardner's first contact with (Mandreger occurred on December 4, 1987. (Tr. 7181-82) Gardner testified that on December 4, Bill St. Clair came into his office and explained that Mandreger had complained of a problem in the hot tool crib area. (Tr. 737-38) St. Clair asked Gardner to accompany him to that area. (Tr. 738) Gardner also stated that when he and St. Clair arrived Mandreger "seemed to be very upset." (Tr. 746)

Gardner then noticed some equipment and gauges piled on the floor. (Tr. 739) Gardner said

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that some of the parts were labelled "internally contaminated", but he did not have any problem picking up those pieces as long as nothing was on the outside. (Tr. 786-87) However, Gardner admitted that at least one part labelled "internally contaminated" was leaking water. (Tr. 787-88) Notwithstanding Gardner's observation, he testified that he viewed the equipment as radiologically safe. (Tr. 834) Nevertheless, he told Mandreger to leave the equipment alone while he went to inquire about the situation. (Tr. 739) In his testimony, Gardner explained that the reason he told Mandreger not to move the equipment was because he did not think all of the pieces belonged in the hot tool crib area. (Tr. 789)

After leaving Mandreger and St. Clair, Gardner went to speak with his supervisor, Sutka. (Tr. 740) According to Gardner, Sutka explained that the equipment had come from I & C, and the general foreman of I & C, Edward Vinsko, also acknowledged the move to Gardner. (Tr. 740-41) Even though Gardner testified that he thought the equipment was radiologically safe, he asked Vinsko whether Health Physics had checked the equipment. (Tr. 741-42) [Vinsko, in his testimony, could not recall any conversation

with Gardner on December 4, concerning this equipment. (Tr. 1103)] Gardner said that when the foreman could not give him an absolute affirmative answer, he then went to the Health Physics office. (Tr. 742- 43) At this point, Gardner's testimony is somewhat conflicting. In his direct testimony, he stated that Health Physics told him that they would send someone to frisk the equipment. (Tr. 743) On cross-examination, Gardner testified that Health Physics told him someone had checked the equipment the night before, but they would send someone else to do a check if he had concerns. (Tr. 791) In any event, Gardner testified that he returned to his office, called Mandreger, and told him he could begin puffing the equipment on the shelves. (Tr. 744, 792) According to Gardner, Mandreger then informed him that Phil Budnik of Health Physics had told him not to move the

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equipment. (Tr. 744, 792) Gardner, at that point, told Mandreger that another Health Physics technician would be up to check the gauges again. (Tr. 744, 792) According to Gardner, Mandreger never refused to follow Gardner's orders to move the equipment. (Tr. 792-93)

Gardner also testified that it was during the *initial* conversation with Mandreger and St. Clair that Mandreger mentioned the NRC. (Tr. 747, 793) In early testimony, Gardner said that during the initial conversation Mandreger stated that he had already gone to the NRC. (Tr. 747) In later testimony, though, Gardner admitted that he could not recall whether Mandreger said he *had already gone* to the NRC or he was going to the NRC. (Tr. 793) [Both versions of Gardner's testimony conflict with Mandreger's testimony in which Mandreger said that he did not assert he was going to the NRC until Gardner ordered him to move the equipment. (Tr. 75-76)] Gardner testified that he did not believe Mandreger should have gone to the NRC because, in his opinion, the problem had been resolved. (Tr. 796) Gardner admitted, though, that an employee must use his own judgment in determining how long to wait for corrective action before going to the NRC. (Tr. 797-98)

Gardner testified that he usually does not know the employee who has filed an NRC complaint. (Tr. 796) However, Gardner acknowledged that on December 9, he saw Mandreger speaking with a NRC inspector. (Tr. 751-52) Gardner then testified that after the NRC official left, he approached Mandreger and asked him "what was that about." (Tr. 752) Mandreger refused to speak about it without union representation. (Tr. 752) Gardner stated that he did not push the matter any further, but told Mandreger he could talk about it when he wanted. (Tr. 752) This characterization of the conversation conflicts with Mandreger's testimony.

Mandreger testified that on December 9, Gardner seemed upset and told him he should not have gone to the NRC. (Tr. 96) Gardner's testimony, however, was confirmed by Osmulski in his testimony. (Tr. 852-53) Gardner said that he did not

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believe he told Mandreger that going to the NRC was wrong. (Tr. 753) However, upon further examination, Gardner admitted that it was possible that he made this statement. (Tr. 807)

Gardner next explained that on December 20, 1987, there was a meeting of tool and warehouse employees during which a Health Physics technician discussed radiological conditions in the hot tool crib area. (Tr. 753, 809) Gardner admitted that this training session was partly in response to Mandreger's NRC complaint. (Tr. 809) Gardner said that during the meeting Mandreger asked several questions, indicating that he really did not understand the information. (Tr. 754, 811) [Dixie Wells, a Senior Health Physics Technician, who was conducting the session on December 20, confirmed Gardner's testimony. (Tr. 972) She also testified that Mandreger seemed "frightened". (Tr. 969-70)] Gardner stated that at the end of the session, but before the employees adjourned, he specifically asked Mandreger whether he had any more questions. (Tr. 754-55, 811) Gardner testified that Mandreger did not seem upset by this question. (Tr. 755)

Gardner said that there were no other incidents between him and Mandreger from December 20 until January 22. (Tr. 755-56) However, after the first of the year, Gardner rotated Mandreger from the hot tool crib area to Warehouse A. (Tr. 772) According to Gardner, the rotation was not premised on a fear that Mandreger was a danger in the hot tool crib. (Tr. 784) In fact, Gardner explained that the work change assignments were routine, and one-third of the employees in the department were reassigned at that time. (Tr. 770- 71) Moreover, Gardner denied that Mandreger was prohibited from entering the hot tool crib area after his reassignment. (Tr. 770) Gardner further testified that Mandreger did not complain to him about the reassignment to Warehouse A. (Tr. 783)

Gardner also denied harassing, criticizing, or singling out Mandreger based on his complaint to the NRC. (Tr. 776) Gardner said that he did not make extra checks on Mandreger because Mandreger

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had filed a report with the NRC. (Tr. 775) Gardner impressed me as a reliable and truthful witness, notwithstanding that he was so enmeshed in the circumstances surrounding Mandreger. I credit his denials of any unlawful conduct.

In addition, Gardner confirmed Shafer's testimony that he had no discussions with Shafer concerning Mandreger's frustrations with management prior to the time Shafer assumed Sutka's position. (Tr. 804) Gardner does recall, however, telling Shafer on one occasion prior to January 12 that he was short-handed, because Mandreger was absent on funeral leave due to his mother's death. (Tr. 805)

The next and final incident involving Gardner and Mandreger occurred on January 22, 1988. Gardner testified that he was away from his office for most of the morning on January 22. (Tr. 756) When he came back to his office between 11:00 a.m. and 11:15 a.m., he walked around the warehouse area to see if the morning truck run had been completed. (Tr. 756-57, 836) Gardner admitted that, in his initial trip around this area, he in fact saw no one. (Tr. 812) A few minutes later, Gardner walked through the warehouse again, although he admittedly does not recall going onto the loading dock area. (Tr. 758) Again, he did not see Mandreger. Gardner testified that he thought this was unusual. (Tr. 758, 836) However, Gardner acknowledged that he had no reason to suspect that Mandreger wasn't doing his job. (Tr. 812) At lunchtime, Gardner did not see Mandreger. (Tr. 759) Gardner testified that during lunch he asked a few Detroit Edison employees, who were also Mandreger's coworkers, if they had seen Mandreger, and they responded that they had not seen him for a while. (Tr. 759-60)

Gardner testified that after lunch, around 12:45 p.m., he found Mandreger on a hi-lo machine outside the turbine area. (Tr. 760-61) Gardner said he was concerned about where Mandreger had been and why the job was not getting done. (Tr. 839) According to Gardner, he asked Mandreger

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where he had been from 11:00 a.m. til 12:00 p.m. (Tr. 761) Gardner then testified that Mandreger jumped off of the hi-lo and yelled in Gardner's face "are you accusing me of not doing my job?" (Tr. 761) I note, however, in his report of the January 22 incident, Gardner does not mention a hi-lo machine or the nose-to-nose conversation. (Respondent's Exhibit No. 14) Gardner said that the conversation ended about 10 minutes later, and Mandreger was polite and wanted to shake hands. (Tr. 761, 763) Gardner stated in his testimony that he had the authority to discipline Mandreger for an unaccountable absence. (Tr. 843) As noted earlier, however, Mandreger testified that Gardner made no mention of discipline to him.

Gardner testified that he went back to his office, and a few minutes later Mandreger came in and yelled that the next time Gardner started accusing him of not being on the job he better have his "p's and q's" straight. (Tr. 764) Mandreger also yelled at Gardner to stop harassing him or he would go to the NRC, the Attorney General, and Channel 7 news. (Tr. 764) Gardner said that this outburst scared him and shook him up badly. (Tr. 764-65) Gardner informed Shafer of Mandreger's behavior shortly thereafter. (Tr. 765) Shafer instructed Gardner to get Mandreger and for them to meet in Shafer's office. (Tr. 765-66)

On further examination, Gardner testified that he thought Mandreger would be referred to EAP even though Shafer made no mention of EAP to Gardner. (Tr. 842-43, 844-45) Gardner, however, admitted that he has never referred any employee to EAP. (Tr. 845-46) Still, Gardner explained that after Mandreger's behavior, he thought Mandreger was a threat to himself, his coworkers, and to plant safety. (Tr. 845) Again, these conclusions

about Mandreger being a threat do not appear on Gardner's report of the incident. (Respondent's Exhibit No. 14) Nevertheless, Gardner maintained that he felt threatened when Mandreger entered his office, even though Gardner admitted that he remained seated throughout Mandreger's outburst. (Tr. 848-49)

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According to Gardner, at the meeting Shafer called, the only issue discussed was Mandreger's behavior towards Gardner. (Tr. 826-27) After Mandreger was referred to EAP, Gardner did not have any more contact with or about Mandreger. (Tr. 828)

Gregory Osmulski

Greg Osmulski is a materials coordinator at Fermi 2. (Tr. 851) He acknowledged that in this capacity he is authorized to give employees work directions but claims that he is not a supervisor. (Tr. 851-52)

Osmulski testified that on December 9, when he and Gardner were in the hot tool crib area, he saw Mandreger speaking to someone that he believed to be a NRC inspector. (Tr. 853) After the NRC inspector left, he overheard a remark by Gardner to Mandreger asking "What is the problem?" (Tr. 853) Osmulski also heard Mandreger respond that he was not allowed to discuss it now. (Tr. 853) This exchange was the only part of the conversation that Osmulski heard. (Tr. 853- 54) Osmulski further stated that he never heard Gardner tell Mandreger that he should not have gone to the NRC. (Tr. 852) Moreover, Osmulski testified that he never saw Mandreger being singled out, harassed, or criticized for going to the NRC. (Tr. 856)

Osmulski said that he had mentioned to management on several occasions that tools in the hot tool crib area needed to be segregated into "clear" and "contaminated". (Tr. 855) He also brought this problem to the attention of John Sutka, who responded that it would be taken care of in the future. (Tr. 869) Even though Osmulski testified that he noticed the problem for about two months prior to December, he never considered going to the NRC because of it. (Tr. 870) According to Osmulski, once Mandreger filed his NRC complaint, segregation of the tools received top priority. (Tr. 854) In fact, Osmulski was given the task of coordinating this segregation plan. (Tr. 858)

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Osmulski admitted that by December 9, he was aware Mandreger had gone to the NRC because it was common knowledge in the hot tool crib area. (Tr. 854) Osmulski also credibly testified that he told Mandreger he was glad Mandreger had gone to the NRC and that things were getting better in the hot tool crib area because of it. (Tr. 854) Osmulski said that he made that statement to Mandreger as a coworker, and that he was sincere in his statement. (Tr. 870, 872) Osmulski stated that he would never make such a

statement to management because management would think it was none of his business. (Tr. 870-71) Osmulski also stated that a NRC complaint is taken seriously by management because R would mean that management would have to take immediate corrective action. (Tr. 861-62)

John Sutka

John Sutka was the general supervisor in nuclear materials at Fermi 2 from 1978 until the end of 1987. (Tr. 1382) In this capacity, his duty was to receive all the materials on site that supported the nuclear plant and to issue and control those tools. (Tr. 1382)

Sutka admitted that during 1987 he had some trouble with a few employees who didn't like his style. (Tr. 1397) However, he did not recall having any group problems with the union. (Tr. 1397) Even though some employees were unhappy with him, Sutka thought that overall his employees were productive, well-organized, and functioning. (Tr. 1406-07) Sutka does not recall saying that he thought people worked better under stress; but he does believe people are better workers when there is a lot of work and they are busy. (Tr. 1409) Sutka testified that he met with Vincent Piersante who was doing an investigation for Detroit Edison, and that he had a difference in opinion with Mr. Piersante. (Tr. 1409-10) Piersante was apparently investigating Sutka's performance in his management position.

Sutka testified that most of the NRC complaints

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he encountered were misunderstandings between employees and management. (Tr. 1596) He said that employees became impatient waiting for management's response and therefore they went to the NRC. (Tr. 1396) However, Sutka did not believe that any of these, complaints involved safety Issues that would endanger anyone's life. (Tr. 1396) Additionally, Sutka felt that NRC complaints hindered work activity. (Tr. 1421) He explained that some complaints were frivolous and arose simply because employees did not understand the procedures. (Tr. 1421) Sutka testified that it was his job to teach his employees about the procedures involved in the work area. (Tr. 1421-22) Finally, Sutka indicated that there were not any precise written guidelines to tell employees how to evaluate whether corrective action was being taken by management before the employee proceeded to the NRC. (Tr. 1424-25)

Sutka testified that he likes to kid and joke, but he would never be flippant in a serious situation. (Tr. 1405) Sutka admitted that he has used the phrase "someone could find themselves at the bottom of a river in cement shoes"; however, he explained that he never directed it to any individual. (Tr. 1406) Moreover, Sutka does not recall and even denies making that statement to Mandreger in June of 1987. (Tr. 1406)

On December 4, 1987, Sutka was aware that tools usually kept by I & C were going to be shifted to the hot tool crib area. (Tr. 1390-91) As Sutka understood the procedure, I & C was to have the tools frisked and cleared before moving them down to the hot tool crib. (Tr. 1403) Sutka explained that frisking tools was not the most serious issue at the plant because frisking machines were in the hot tool crib, Health Physics technicians were always available, and employees were instructed not to touch or move anything they thought was hot. (Tr. 1404) Sutka testified that I & C was delayed in transporting the tools; thus, the equipment arrived in the hot tool cool when there was inadequate coverage, so it was just left on the floor on the evening of December 3. (Tr. 1391-92)

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According to Sutka, on the morning of December 4, Don Gardner informed him that Mandreger had a problem with the equipment that was left on the floor of the hot tool crib area the previous night. (Tr. 1387) Sutka also said that Gardner mentioned that there was an allegation that Mandreger was making a report to the NRC concerning the equipment. (Tr. 1387) When Mandreger came to Sutka around noon on December 4 requesting permission to go home because he felt ill, Sutka asked him what had gone on in the hot tool crib area that morning. (Tr. 1386-87) Sutka testified that he asked Mandreger about this because he wanted to find out what was bothering him since he was aware that employees had previously been reluctant to work in that area. (Tr. 1413) Sutka further stated that he never mentioned the NRC to Mandreger during this conversation. (Tr. 1387) According to Sutka, when Mandreger said that he didn't want to discuss it, he didn't push the issue any further. (Tr. 1387) This characterization of the December 4 conversation with Sutka conflicts with Mandreger's version. (Tr. 80) Mandreger testified that Sutka was very upset and told Mandreger that "going to the NRC, it's making us look bad." (Tr. 80) I note the similarity in the statement allegedly made by Sutka to Mandreger and the statement allegedly made by Shafer to Mandreger. It raises the question of whether there was some confusion as to what Mandreger was told and by whom. In any case, even if Sutka made the statement, it probably was in the nuclear industry a basic truism, *ie.*, going to the NRC does, in fact, make the company look bad. Thus, I am not prepared to find that such a statement alone, absent other evidence of animus, is *ipso facto* an overt act of harassment or intimidation. Sutka also denied discussing the NRC with Mandreger subsequent to December 4. (Tr. 1388-89)

Sutka did not prepare any documentation that Mandreger had exhibited aberrant behavior on December 4. (Tr. 1414) Sutka stated that he objected to Mandreger's NRC complaint because he felt

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that Mandreger did not give any notice of the problem to management before going to the NRC. (Tr. 1422-23) Moreover, according to Sutka, Mandreger's complaint stemmed out

of the process of transferring tools to the hot tool crib area in which the NRC was already involved. (Tr. 1423)

Finally, Sutka testified that he conferred from time to time with Shafer before Shafer replaced him in his position on January 11, 1988. (Tr. 1399) According to Sutka, in these conversations, he would tell Shafer how things were going in the department, but apparently did not mention that Mandreger had gone to the NRC. (Tr. 1399)

Vincent Piersante

Vincent Piersante is a former chief of detectives for the Detroit Police Department and former chief of the Organized Crime and Public Corruption Division for the State of Michigan. (Tr. 923-24) Mr. Piersante is now retired from those positions and works as a management consultant. (Tr. 924) He testified that he was contacted by Detroit Edison to review and analyze the management at Fermi 2. (Tr. 925) This assignment lasted until January of 1988. (Tr. 926)

According to Piersante, Sutka was the type of supervisor who was not doing his job. (Tr. 947) Piersante believed that Sutka did not pay adequate attention to the complaints of his subordinates. (Tr. 947)

Piersante testified that he was contacted by Mandreger on December 9, 1987. (Tr. 926) Piersante explained that when Mandreger met with him, he brought along a four or five-inch stack of papers that he alleged documented wrongdoings in the warehouse. (Tr. 927-28) Mandreger also told Piersante that he had submitted a 13 page report to the NRC. (Tr. 928) Piersante said that as the conversation continued, Mandreger decided not to release any reports to Piersante until he had an opportunity to talk to his attorney. (Tr. 928)

Furthermore, Piersante stated that Mandreger talked mostly in vague generalities. (Tr. 930) Mandreger

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mentioned only one specific incident around May of 1987 where Sutka responded to Mandreger's problem with a flippant remark about being found in the bottom of the river in cement shoes. (Tr. 930-31) Piersante also testified that when Mandreger alleged that management was not listening to him, only Sutka's name was specifically mentioned. (Tr. 962)

Piersante said that during the interview Mandreger never complained that he was being harassed, criticized, or singled out because he went to the NRC. (Tr. 931) Piersante also stated Mandreger did not get back in touch with him so that he could review Mandreger's report or discuss specific violations. (Tr. 933)

Piersante testified that he considered himself very experienced in interviewing witnesses. (Tr. 923) According to him, Mandreger's conversation with him on December 9 was neither coherent nor substantive. (Tr. 956) Piersante believed that Mandreger was very distrustful of everyone to whom he had given information. (Tr. 946) Mandreger also seemed frustrated in that he believed people were not listening to him or doing anything to correct his complaints. (Tr. 946, 956-57)

Piersante, in a report filed around the first of the year, suggested to management that someone should talk to Mandreger and allay his concerns before he exploded. (Tr. 934, 964) On further examination, Piersante testified that he and Bob Kelm, Director of Nuclear Security, discussed the report's references to Mandreger. (Tr. 952, 963) However, Piersante explained that he does not recall any specific action being mentioned in this meeting with Kelm. (Tr. 963) Piersante also stated that he does not know if this information about Mandreger was passed on to any of his daily supervisors. (Tr. 963)

Piersante impressed me as a straightforward witness who was able to relate facts as he observed them. He seemed to be a rather objective individual who was able to express criticism of management and problems within management. Moreover, I find his observation of Mandreger to

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be particularly probative in explaining Mandreger's actions, more so than the plethora of conflicting medical opinion evidence that was developed in this case.

Jerome Nadolski

Jerome Nadolski is the senior clinical social worker in the Employee Assistance Program (EAP) at Detroit Edison. (Tr. 1105-06) According to Nadolski, EAP is a "confidential counseling and referral program available to Detroit Edison employees" and their families. (Tr. 1107) Nadolski explained that if an employee is referred to EAP by his supervisor, then EAP notifies the supervisor of the employee's visit and advises the supervisor of EAP's recommendation; however, EAP does not inform the supervisor of the reason for the recommendation. (Tr. 1110)

Nadolski testified that on January 22, 1988, he received a call from Shafer regarding Mandreger. (Tr. 1111) According to Nadolski, Shafer explained to him that Mandreger had reacted with rage and anger during a conversation where Shafer tried to express his condolences to Mandreger about the death of his mother. (Tr. 1112) Nadolski did not recall Shafer telling him that Mandreger was overreacting to work problems or that Mandreger became angry when Shafer tried to solicit job-related problems from him. (Tr. 1178-79) Nadolski further testified that Shafer explained that Mandreger had again overreacted when Gardner questioned him about his whereabouts earlier that day-January 22. (Tr. 1113) Nadolski stated that in this telephone conference with Shafer, Shafer indicated that he had a concern that Mandreger might be a threat to himself or others. (Tr.

1141) Although Nadolski admitted, that the word "threat" was his word choice and not Shafer's, he stood by his testimony that Shafer indicated to him that Mandreger might be a potential problem, to himself or the work group. (Tr. 1142) Based on Shafer's description of the incidents, Nadolski told him to send Mandreger to EAP. (Tr. 1113) Nadolski

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testified that it was very routine, to request that an employee come into EAP when the employee's supervisor complained about outbursts or altercations. (Tr. 1113)

Nadolski recounted his initial interview with Mandreger on January 25, 1988. (Tr. 1114) Nadolski described him as very verbal, friendly, and cooperative during this interview. (Tr. 1115) Nadolski acknowledged that after the interview with Mandreger, he wrote in his notes "no immediate evidence of psychopathology." (Tr. 1119, 1145) However, Nadolski testified that he was concerned by the hyperactivity and flight of ideas that Mandreger exhibited. (Tr. 1120) Nadolski also said he was concerned because Mandreger mentioned aspirations about being a pilot or an astronaut for NASA, and he felt that Mandreger was setting his goals too high based upon his limited background. (Tr. 1159, 1173-74)

At the end of the initial interview, Nadolski told Mandreger that he wanted him to see a physician. (Tr. 1116) Nadolski testified that Mandreger then became defensive. (Tr. 1116) Nadolski explained, however, that a physician routinely sees an employee before the employee returns to work because EAP wants a medical doctor to make the final decision so that potential mistakes are, reduced. (Tr. 1116, 1174-75) Nadolski stated that once he explained to Mandreger that it was common to see a physician, then Mandreger became cooperative. (Tr. 1117)

On the afternoon of January 25, Mandreger met with Dr. Smith and Nadolski. (Tr. 1121) Nadolski testified that during this second interview he became concerned because Mandreger was angry and defensive and behaved very differently from the way he had acted during the initial interview. (Tr. 1121-22) According to Nadolski, Dr. Smith referred Mandreger to Dr. Qadir and told Mandreger that he could not return to work until further notice. (Tr. 1123-24) On cross-examination, Nadolski stated that he was not aware of a report concerning Mandreger written by Mr. Piersante. (Tr. 1160-61)

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On February 1, at the direction of Dr. Smith, Nadolski contacted Dr. Qadir to see if he had completed his report on Mandreger. (Tr. 1124-25) According to Nadolski, Dr. Qadir informed him that Mandreger should not return to work because Mandreger's behavior indicated some psychotic symptoms. (Tr. 1125) Nadolski stated that Dr. Qadir recommended that Mandreger undergo some in-patient hospitalization. (Tr. 1125) This

same day, Nadolski spoke with Shafer and informed him that Mandreger would remain on medical leave until further notice. (Tr. 1125-26) Nadolski testified that he never told anyone in management about Mandreger's diagnosis nor did he tell anyone that Mandreger was dangerous. (Tr. 1166-67)

On February 8, 1988, Dr. Smith and Nadolski met with Mandreger to discuss Dr. Qadir's report. (Tr. 1126) Nadolski, testified that at the meeting, Mandreger rejected Dr. Qadir's diagnosis of bipolar disorder and his recommended treatment. (Tr. 1126-27) Mandreger indicated to Nadolski and Smith that he wanted to discuss the report with his wife and then have another meeting. (Tr. 1127)

In his testimony, Nadolski acknowledged that although he had observed Mandreger's flight of ideas and mild depression, he did not attribute this behavior to a bipolar disorder. (Tr. 1158) Nadolski continued by explaining that most of his dealings with bipolar individuals had occurred during their treatment stages; therefore, he had not had direct exposure to classic bipolar symptoms. (Tr. 1158) Nadolski also testified that there are Detroit Edison employees with bipolar disorders who are taking Lithium and functioning well at work. (Tr. 1157) Nadolski stated that he does not know if Lithium is a prohibited drug at Fermi 2. (Tr. 1175- 76)

According to Nadolski, on February 17, he met with Mandreger and his wife. (Tr. 1127) Dr. Smith was not present because he was on vacation. (Tr. 1127) Nadolski testified that at this meeting, Mandreger told him that he was going to seek independent

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medical opinions. (Tr. 1127) Nadolski said that he made a note to himself, to discuss this matter with Dr. Smith. (Tr. 1127) Nadolski's testimony that Mandreger introduced the idea of getting additional medical opinions conflicts with Mandreger's testimony and Mrs. Mandreger's testimony. Mandreger testified that Dr. Smith told him to get a second and third opinion after Mandreger objected to taking Lithium. (Tr. 149) Mrs. Mandreger testified that Nadolski told her and her husband that he would need to get independent medical opinions if he refused to take lithium. (Tr. 410)

Nadolski stated that on March 10, 1988, he and Dr. Smith met with Mandreger again. (Tr. 1130) At this time, Mandreger gave them three psychiatric evaluations indicating that he was able to return to work. (Tr. 1130) Nadolski recalls that the three notes were substantively brief. (Tr. 1130) According to Nadolski, Dr. Smith informed Mandreger "that medical would have to review the case further." (Tr. 1130) [This testimony by Nadolski is inconsistent with the testimony of Mandreger and Dr. Smith. Mandreger testified that Smith informed him that an administrative decision would be made, which "shocked" Mandreger because he thought Smith would make the final decision. (Tr. 157) In his testimony, Dr. Smith stated that he informed Mandreger that he would need additional time to contact Mandreger's doctors. (Tr. 1275)], Nadolski testified, however,

that it was ultimately Dr. Smith's decision as to whether Mandreger should return to work. (Tr. 1132)

On March 21, Mandreger brought in another report from Dr. Pitts concluding that he could return to work. (Tr. 1131) Nadolski testified that at this meeting, Mandreger was cooperative, as he always had been. (Tr. 1131) However, Nadolski noted that Mandreger seemed mildly depressed, but alert and more sedate in his flight of ideas. (Tr. 1131, 1152) According to Nadolski, when Dr. Smith suggested to Mandreger that he see Dr. Qadir again, Mandreger resisted and said he would have to talk with his lawyer. (Tr. 1131) Nadolski

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did not recall any discussion between Smith and Mandreger in which Mandreger was asked to sign a medical release. (Tr. 1133)

Nadolski stated that his final meeting with Mandreger was on May 3, 1988. (Tr. 1135) At this time, Mandreger stated that he was on Lithium. (Tr. 1135) Mandreger also brought a recommendation from Dr. Pitts stating that he could return to work as of May 2, 1988. (Tr. 1135)

Dr. Donald Smith

Dr. Donald Smith is employed by Detroit Edison as a staff physician. (Tr. 1263) He testified that he primarily examines patients with on-the-job illnesses or injuries. (Tr. 1263) Because Dr. Smith is not a specialist in the field of psychiatry, he acknowledged that he would defer to a psychiatrist for a diagnosis or recommendation. (Tr. 1288)

Smith testified that on January 25, he spent a considerable amount of time interviewing Mandreger about the incident occurring on January 22. (Tr. 1266-67) Smith stated that he did not attempt to conduct a full mental examination of Mandreger. (Tr. 1291-92) However, Smith stated that he believed Mandreger's behavior was abnormal because Mandreger was sometimes hostile and would move from topic to topic when recounting a single event. (Tr. 1267) Nevertheless, Smith confirmed that in his report regarding this interview, he noted that he saw "no evidence of psychotic behavior." (Tr. 1295-96) In spite of this observation, Smith determined that Mandreger should be evaluated by a psychiatrist. (Tr. 1267)

At the end of his interview with Mandreger on January 25, Smith arranged for an evaluation by Dr. Qadir. (Tr. 1268) Smith testified that Detroit Edison has referred about six patients to Qadir. (Tr. 1289) Smith further stated that after the interview, he contacted or instructed Nadolski to advise Mandreger's supervisors he would be on leave pending further testing. (Tr. 1270)

Upon receiving Dr. Qadir's report, Dr. Smith contacted Mandreger; however, Smith did not

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contact Qadir to discuss the diagnosis with him. (Tr. 1269) In Smith's opinion, Qadir's diagnosis of bipolar disorder with manic episode matched, Mandreger's behavior. (Tr. 1269) Smith also noted that Qadir's report referred to the death of Mandreger's mother. (Tr. 1314) Smith, however, did not recall discussing this reference with Mandreger during their subsequent sessions. (Tr. 1314) In Smith's opinion, the purpose of his visits with Mandreger during February and March did not call for discussions on this topic. (Tr. 1315)

On February 8, Smith met with Mandreger concerning Qadir's report. (Tr. 1269-70) Smith informed Mandreger that he could not return to work and suggested that he receive treatment for his bipolar disorder. (Tr. 1269-70) According to him, Mandreger was reluctant to admit that he had any problems. (Tr. 1269) Smith recalled that Mandreger wanted permission to see a psychiatrist of his own choosing for an evaluation. (Tr. 1271) Smith stated that he consented to Mandreger's request and indicated to Mandreger that he would take additional opinions into consideration. (Tr. 1271-72) [Dr. Smith's testimony about whose suggestion it was to seek additional psychiatric evaluations conflicts with testimony of prior witnesses. Mandreger testified that it was Smith who suggested gathering independent evaluations. (Tr. 149) Mrs. Mandreger stated in her testimony that Nadolski told Mandreger he would need other psychiatrists opinions if he refused the recommended treatment. (Tr. 410) Finally, Nadolski testified that the issue of independent medical opinions was not discussed in the February 8 meeting; instead, Mandreger made such a request during a meeting on February 17 in which Dr. Smith was not present. (Tr. 1127)] On cross-examination, Dr. Smith testified that, "the ball was in [Mandreger's] court" because it was Mandreger's idea to seek additional evaluations. (Tr. 1299) Smith further stated that he did not know what would happen if Mandreger failed to gather these medical opinions. (Tr. 1299) Smith also stated that he did not know how long before Detroit Edison

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could terminate Mandreger's employment outright. (Tr. 1299)

Smith stated that he had meetings with Mandreger on February 26 and March 4. (Tr. 1301-02) Dr. Smith testified that on February 26, Mandreger did not appear depressed or agitated. (Tr. 1301) He also confirmed that after the March 4 visit, he noted in his report that Mandreger did not exhibit any evidence of depression or mania. (Tr. 1302)

Dr. Smith testified that although he did not request the cover letters from Mandreger's independent psychiatrists, Mandreger brought three such letters to him on March 11,

1988. (Tr. 1272, 1303) However, in later testimony, Smith stated that since it was up to Mandreger to get these additional psychiatric evaluations, he simply waited for Mandreger to bring them to him. (Tr. 1301) Each of the three letters which Mandreger presented to Dr. Smith stated that Mandreger could return to work because there was no evidence of psychiatric illness. (Tr. 1272, 1274)

Dr. Smith admitted that during his visit with Mandreger on March 11, he again did not note any evidence of behavior indicating mania or depression. (Tr. 1303-04) Even though Smith noticed that Mandreger was not exhibiting psychotic symptoms, and the three letters concluded that Mandreger could return to work, Smith testified that he "felt obligated to keep him off work" because a bipolar disorder can regress and reappear in a very short period of time if it is not treated. (Tr. 1303) Smith further stated that this meeting on March 11 ended with an understanding that Smith would wait until Mandreger brought in a fourth medical opinion letter. (Tr. 1274)

On March 21, 1988, Mandreger delivered a letter to Dr. Smith from Dr. Pitts. (Tr. 1274) According to Smith, the letter stated that Mandreger could return to work because psychiatric illness was not demonstrated. (Tr. 1275) Smith testified that at this meeting he told Mandreger that he would need time to contact these four doctors and obtain further information. (Tr. 1275) Smith acknowledged that he had the ultimate decision

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on whether to return Mandreger to work. (Tr. 1282-83)

Dr. Smith also stated that at this meeting on March 21, he suggested that Mandreger revisit Dr. Qadir for another evaluation; however, Mandreger strongly opposed this idea. Smith admitted that he did not make any definite plans for Mandreger to see Dr. Qadir again. (Tr. 1304)

Dr. Smith explained that in order to further discuss Mandreger's case with the four independent doctors, he needed a medical release from Mandreger. (Tr. 1277) Mr. Jamison, the Union Chairman, was asked to obtain this release because he had the necessary forms. (Tr. 1277) As Smith understood it, Mandreger was to sign these releases whom he "wound up in Coldwater." (Tr. 1277) Smith stated that he did not see Mandreger again until May 2, 1988. (Tr. 1277) On May 3, Mandreger delivered to him a work release from Dr. Pitts. (Tr. 1278) Smith testified that he spoke with Pitts and Shafer about whether Mandreger could return to Fermi 2. (Tr. 1279-180) Smith further explained that he decided Mandreger should not return to Fermi 2, and Pitts agreed, with this decision. (Tr. 1279) According to Smith, Mandreger's return to Fermi 2 might be too stressful for him and result in a relapse. (Tr. 1306-07) Smith believed that Mandreger would perceive Fermi 2 as stressful because Mandreger had previously encountered stressful situations at Fermi 2 and because it is generally regarded as more stressful than other plants operated by Detroit Edison. (Tr. 1308) Thus, Smith admitted that his decision

to relocate Mandreger was based upon information and a belief that Mandreger's prior employment at Fermi 2 was a stressor for him. (Tr. 1307)

Dr. Ghulam Qadir

Dr. Ghulam Qadir has a private psychiatric practice. (Tr. 1200) Dr. Qadir testified that he had conducted seven or eight evaluations for Detroit Edison. (Tr. 1201) These evaluations generally

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were to determine whether a person had an emotional problem and whether he/she was capable of working. (Tr. 1201-02)

Qadir conducted a 45 minute interview of Mandreger on January 27. (Tr. 1204, 1218) He concluded that Mandreger was suffering from a manic type bipolar disorder because he was in an elevated, irritated mood with lots of energy and pressured speech. (Tr. 1204) Qadir further stated that Mandreger jumped from subject to subject and portrayed himself in a grandiose manner which are a typical bipolar disorder symptoms. (Tr. 1204) Qadir admitted that he did not use the word "agitated" to describe Mandreger's behavior even though agitation is classic behavior for one with a bipolar disorder. (Tr. 1232-33)

Dr. Qadir stated that he made a tentative conclusion of bipolar disorder during his first couple of minutes with Mandreger. (Tr. 1219) Mandreger walked in with glasses, a black coat, and a tape recorder. (Tr. 1219, 1221) According to Qadir, this behavior aroused his suspicion that Mandreger was suffering from persecutory delusions. (Tr. 1220) Qadir further stated that upon coming into the office, Mandreger requested an additional copy of the evaluation so that he could apply to NASA. (Tr. 1208) Qadir opined that this request was part of his grandiosity. (Tr. 1208) Mandreger also brought along reports from his prior psychological testing which, according to Qadir, illustrated his suspicion and distrust. (Tr. 1208)

Dr. Qadir admitted that when he made his diagnosis he was under the belief that Mandreger actually was absent from work for one hour on January 22. (Tr. 1216) However, he asserted that he would not change his diagnosis of bipolar disorder based upon information that Mandreger was not absent. (Tr. 1216)

Dr. Qadir confirmed his notation that he believed Mandreger was suffering from persecutory delusions. (Tr. 1220) He acknowledged that this conclusion was partly based upon Mandreger's statements that he was being harassed for going to the NRC. (Tr. 1220) Moreover, Qadir admitted

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that he did not know the actual, facts of the relationship between Mandreger and Detroit Edison's management, and thus, he could not know if Mandreger's perception of harassment was delusional, or not. (Tr. 1222) Nevertheless, he maintained that Mandreger's interaction with him in the interview view suggested persecutory delusions. (Tr. 1222) However, Dr. Qadir acknowledged that Mandreger could have been suspicious of him because he was chosen by Detroit Edison, which Mandreger already distrusted. (Tr. 1222)

Dr. Qadir testified that he did not believe Mandreger's perception of reality was intact during the interview on January 27. (Tr. 1229) However, Qadir admitted that he had no knowledge of what was happening at work which would prompt Mandreger in January of 1988 to file a police report about a problem he encountered with his supervisor in June of 1987. (Tr. 1230) Dr. Qadir maintained that he made no inquiries about Mandreger's work situation because, in his professional opinion, Mandreger was obviously suffering from a bipolar disorder. (Tr. 1230-31)

Dr. Qadir concluded that Mandreger's emotional illness was caused by the death of his mother in early January. (Tr. 1205) In his opinion, Mandreger's total denial that his mother's death caused him any grief or sadness, evidenced the problem Mandreger was having coping with his mother's death. (Tr. 1225-26) Qadir explained that he had a problem attributing Mandreger's disorder to job stress because Mandreger had worked at Detroit Edison for 4 and one-half years, and he only began exhibiting behavior indicating a disorder 3 weeks after his mother's death. (Tr. 1248- 49) According to him, the death of Mandreger's mother was the only new stressor in his life which would stimulate the illness. (Tr. 1251-52) Qadir also testified that there was a good possibility that Mandreger would have suffered a bipolar disorder even if his mother had not died. (Tr. 1247) He dated that he could not predict when Mandreger became ill or how long he had been ill prior to this interview on January 27. (Tr. 1246)

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Dr. Qadir recommended that Mandreger not return to work. (Tr. 1207) Although he stated that on January 27 he did not believe Mandreger was a danger to himself or others, he testified that Mandreger could quickly become dangerous if he did not receive medication. (Tr. 1229, 1242-43) Qadir explained that once a person is on a maintenance level of Lithium, he no longer presents a danger. (Tr. 1243) He continued, however, that the problem is making certain that the person is continuously taking his medication. (Tr. 1243) If this assurance can be made, then the patient can return to work. (Tr. 1244) In Qadir's opinion, he could not guarantee that Mandreger would take his prescribed level of medication because Mandreger totally denied having a problem. (Tr. 1244)

Dr. Qadir testified that he had no further contact with Mandreger after the interview on January 27. (Tr. 1215) He also stated that he never saw any reports from other doctors concerning Mandreger. (Tr. 1215)

Gloria Pitts

Dr. Gloria Pitts has a private practice in psychiatry. (Tr. 1342) Dr. Pitts conducted a diagnostic evaluation of Mandreger on March 8 and April 26 of 1988. (Tr. 1343) Pitts testified that she did not diagnose Mandreger's illness on March 8 because she had not completed her evaluation. (Tr. 1343- 44) However, she stated that, after this first interview, she wrote a letter for Mandreger's employer recommending that he could return to work because he had not exhibited any kind of psychopathology. (Tr. 1344-45, 1353)

Dr. Pitts explained that her initial impression was that Mandreger was suffering from an adjustment reaction with mixed emotional features. (Tr. 1345) However, after April 26, 1988, she received subsequent data which convinced her that Mandreger was suffering from a bipolar affective disorder. (Tr. 1346, 1357)

Dr. Pitts testified that she was treating Mandreger with Lithium medication for his bipolar disorder. (Tr. 1346-47, 1352) According to her, Mandreger

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will have to remain on medication for a long time and possibly for life. (Tr. 1348, 1352) She admitted that she is aware that Mandreger is not taking his medication. Susan Mandreger apparently informed her of Mandreger's noncompliance on June 27, 1988. (Tr. 1348) Pitts further stated that she confirmed through blood work on Mandreger that he was failing to take his medication. (Tr. 1349) Pitts opined that Mandreger may be noncompliant in his medication because the prescribed Lithium has not reached a therapeutic level. (Tr. 1352)

Dr. Pitts believed that the last time she saw Mandreger was the end of June or beginning of July. (Tr. 1350) However, she acknowledged that she was aware Mandreger had left town as of August 23, 1988 and apparently quit his employment with Detroit Edison. (Tr. 1353) According to her, Mandreger's current disappearance is related to his illness. (Tr. 1357) Pitts further stated that Mandreger's recent resignation from Detroit Edison was also connected with his bipolar disorder. (Tr. 1358)

According to Dr. Pitts, the death of Mandreger's mother was not a significant triggering event in his development of bipolar affective disorder. (Tr. 1357) Pitts believes that the relief Mandreger expressed about the death of his mother was normal because he loved his mother very much and was glad to see her suffering end. (Tr. 1356) She stated, however, that she did not have the records from Foote Hospital or Coldwater which indicated that Mandreger began acting in a childlike manner after the death of his mother, (Tr. 1364-65) Nevertheless, she maintained that his mother's death was not a significant stressor in the onset of Mandreger's illness. (Tr. 1368) She explained that Mandreger exhibited mania, not depression, during his illness, and "it is highly unlikely that someone would act in a manic fashion if someone, had died." (Tr. 1364) Pitts

acknowledged that his mother's death had some impact on Mandreger, but not to the extent of making him occupationally and socially nonfunctioning. (Tr.

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1364) She did admit, however, that Dr. Qadir, could have observed behavior indicating the death of Mandreger's mother as a triggering event because Qadir's evaluation occurred closer to the time of her death. (Tr. 1377)

In Dr. Pitt's opinion, employment stressors triggered Mandreger's bipolar disorder. (Tr. 1355-56) She testified that Mandreger told her that he believed his supervisors were retaliating against him for filing a NRC complaint. (Tr. 1354-55) Pitts recalled that Mandreger characterized this retaliation as an ongoing process where supervisors were scrutinizing him more closely, surveiling the time he spent on breaks, and questioning him as to why he went to the NRC. (Tr. 1354-55, 1369) She opined that the triggering factor in Mandreger's illness was when a supervisor questioned his whereabouts because such an accusation impinged upon his credibility and ability to do his job. (Tr. 1370)

Dr. Pitts testified that whenever Detroit Edison made a request, she furnished them with her opinion about Mandreger's condition. (Tr. 1358) She further stated that she agreed with Dr. Smith's recommendation that Mandreger should not return to Fermi 2. (Tr. 1379) In her opinion, if Fermi was a place where there was a great deal of pressure, then it was best that Mandreger not work there because such an environment would likely cause his illness to reappear. (Tr. 1361, 1397)

Philip Budnik

Philip Budnik is employed by Detroit Edison as a Health Physics Technician. (Tr. 881) Budnik testified that on the morning of December 4, 1987, he was passing near the hot tool crib area when Mandreger waived him over to the area. (Tr. 884- 85) Budnik stated that he noticed between 30 and 40 gauges lying on the floor, and that three or four of these pieces were leaking water. (Tr. 886- 87) He further noted that some of the equipment had yellow and magenta stickers which indicated internal contamination. (Tr. 887-88)

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On cross-examination, Budnik admitted that people who are not in Health Physics could be frightened of equipment marked "internally contaminated." (Tr. 898) In fact, Budnik testified that other tool crib employees have requested more training in working with contaminated items and frisking these items. (Tr. 907).

Budnik stated that after Mandreger showed him the gauges, he took a hand frisker from the wall of the hot tool crib to survey the equipment. (Tr. 885) He explained that he

checked the gauges which were leaking water but did not find any notable contamination. (Tr. 890-91)

Budnik then told Mandreger that the equipment was not "hot," but he would check it with a cotton swab test. (Tr. 891) He explained that a cotton swab test can detect contamination missed by the frisker. (Tr. 891) Budnik stated that a cotton swab test requires a period of waiting while the water evaporates. (Tr. 900) He acknowledged that when he left the hot tool crib area 5 minutes later, it is possible that Mandreger could have believed that the test was not completed or conclusive. (Tr. 901) [Dixie Wells, the Senior Health Physics Technician, stated in her testimony that employees are instructed not to touch the equipment until Health Physics has completed the frisker and cotton swab test and given the employee assurances that the equipment is clean. (Tr. 984-85)] Budnik could not recall telling Mandreger not to move the parts until the tests were completed. (Tr. 901) Nevertheless, he admitted that it was possible that he instructed Mandreger not to touch the gauges. (Tr. 902)

In Budnik's opinion, the gauges were not hazardous. (Tr. 892) However, Budnik acknowledged that he has more extensive knowledge concerning radioactive hazards than employees and supervisors in the tool room. (Tr. 894-95)

Michael Mason

Michael Mason is a Health Physics Technician employed by Detroit Edison. (Tr. 1039) He testified

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that on the evening of December 3, 1988, he was assigned to survey and check equipment inside a barrier in the I & C hot shop before it was transported to the hot tool crib area. (Tr. 1044-45) Mason stated that as far as he knew, he was the only one who surveyed the gauges. (Tr. 1052) According to him, the survey of this equipment was low priority. (Tr. 1051-52)

Mason testified that on December 3, he checked this equipment using a clean cloth smear test and a frisker. (Tr. 1046-48) He explained that he labelled some of the parts with slickers indicating internal contamination because the two tests that he performed could not conclusively rule out the possibility of contamination inside the gauges. (Tr. 1048, 1055) Mason stated that he did not observe water leaking from any of the gauges. (Tr. 1048) Nevertheless, he taped the end of the gauges so that any water could not leak out. (Tr. 1048) Mason also said that he did not put stickers on all 40 gauges because some of these parts were used for gas service, and therefore, there was "no reason to think they would be contaminated." (Tr. 1048-49)

Mason testified that after he completed the survey of the gauges, he put the equipment on a cart outside the hot shop barrier. (Tr. 1049) Mason said that he was not involved in the move of this equipment from the hot shop to the hot tool crib area. (Tr. 1054)

Mason testified that if an employee has a question about contamination on a piece of equipment, then the employee should contact Health Physics and avoid handling the equipment until Health Physics has checked and cleared it. (Tr. 1059)

Edward Vinsko

Edward Vinsko is employed by Detroit Edison as the Instrument Shop Foreman at Fermi 2. (Tr. 1089) Vinsko explained that the quality department (QA) at Fermi had expressed concern over the manner in which I & C was storing calibrated equipment. (Tr. 1092-93) After discussions with

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QA, Mr. Sutka, and Mr. Gardner, it was decided that this equipment should be moved to the tool issue area. (Tr. 1093)

Vinsko testified that his department was in charge of moving this equipment from the hot shop to the hot tool crib area. (Tr. 1092) He further stated that he instructed someone to have Health Physics check the equipment before the move. (Tr. 1095)

Vinsko testified that he believed Sutka was aware that the move of the equipment had been scheduled for December 3. (Tr. 1096) However, he did not know if Sutka informed anyone else in his department. (Tr. 1099-1100) Vinsko did not know whether Gardner knew of the move on the scheduled date. (Tr. 1096, 1099)

Vinsko stated that he did not supervise the relocation of the gauges to the hot tool crib area because he had left work for the day. (Tr. 1100-01) He said that before leaving work he was informed that Health Physics had surveyed the equipment; however, he was not aware of their conclusions. (Tr. 1101-02)

Finally, Vinsko testified that he could not recall speaking with Gardner on December 4 about this equipment. (Tr. 1103) He does not remember any conversation with Gardner where he told Gardner to have the equipment checked out by Health Physics. (Tr. 1103) [According to Gardner's testimony, on December 4, he asked the I & C foreman, Vinsko, whether Health Physics had cleared the equipment before the move, and Vinsko responded that he was sure Health Physics had been involved, but it would be best to talk with them. (Tr. 737, 741-42)]

Donald Bailey

Donald Bailey is a detective for the Michigan State Police. (Tr. 1254) He testified that he was on duty the night of January 22, 1988, when Mandreger came into the police station. (Tr. 1255) Bailey stated that Mandreger arrived about 11:00 p.m. (Tr. 1255)

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According to Detective Bailey, Mandreger wanted to report a threat which occurred in June 1987. (Tr. 1236) Bailey recalled that Mandreger said that he had been working undercover for the FBI and NRC reporting misappropriations and wrongdoings at Fermi 2. (Tr. 1256) In addition, Bailey testified that Mandreger informed him that one of his supervisors had threatened his life when this supervisor discovered what Mandreger was doing. (Tr. 1256-67) Finally, Bailey recounted that Mandreger indicated that he wanted to have this incident on file with the police in case something happened to him. (Tr. 1257)

Bailey testified that Mandreger's demeanor "was extremely anxious to the point of being manic." (Tr. 1257) According to him, Mandreger jumped from one topic to another. (Tr. 1257) Bailey said that Mandreger mentioned the recent death of his mother; however, Bailey did not include this in his report, because he considered it irrelevant to the threat on Mandreger's life. (Tr. 1261)

Bailey testified that he contacted Detroit Edison on Sunday morning to confirm that Mandreger worked there. (Tr. 1258) He recalled speaking with Mr. Gardner. (Tr. 1258) In the conversation, Detective Bailey told Gardner that Mandreger had expressed concern that his evaluation with the employer's psychologist "was going to be a rigged evaluation against him in some way." (Tr. 1258)

Detective Bailey's testimony was especially probative in that it underscored Mandreger's overreaction to events at work as well as his apparent need to put himself in a grandiose light.

William Church

William Church is employed by Detroit Edison as a general maintenance journeyman at Fermi 2. (Tr. 993-94) He is also the union steward for the Maintenance Division. (Tr. 993) Church explained that he knew Mandreger because Mandreger has issued him tools from the tool crib. (Tr. 997)

Church testified that one day in January of 1988, his Union Chairman, Cecil Renick, asked

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him to go to the Stores Division and represent Mandreger in a problem that had transpired. (Tr. 998-99) According to Church, Renick told him that Gary Jamison, the Union Chairman of the Stores Division, had authorized the representation. (Tr. 999) Church said, that at this time, someone mentioned to Renick that Mandreger's mother had recently passed away and Mandreger was possibly upset by her death. (Tr. 999-1000) Church stated that when he tried to console Mandreger on the death of his mother, Mandreger became, irritated and said that he did not have a problem with his mother's passing. (Tr. 1026-27)

After Renick instructed Church to represent Mandreger, Mr. Gardner came and walked him to Mandreger's work area. (Tr. 1000) Church recalled that Gardner told him that Mandreger was very upset and refused to speak with anyone. (Tr. 1000) Church testified that in this conversation, Gardner stated he had been fearful of Mandreger during their confrontation. (Tr. 1033) Church also stated, however, that Gardner did not appear, frightened of Mandreger when he was taking him down to Mandreger's work area or later luring the meeting with Mandreger. (Tr. 1033-34)

Church told Gardner that he would like to speak with Mandreger alone. (Tr. 1000) He walked up to Mandreger and explained why he had been contacted. (Tr. 1001) According to Church, Mandreger stated that he did not trust anyone at the company, including Church. (Tr. 1001-02) Church recalled that Mandreger told him how his life had been threatened by Sutka in June of 1987, and that he felt that the company was out to get him. (Tr. 1001-02) Mandreger also told Church that he believed the company was retaliating against him for filing an NRC complaint. (Tr. 1029-30)

Church testified that he had his own fears of management retaliation and loss of job security if he would go to the NRC. (Tr. 1030) He qualified this statement, however, by explaining that he has since complained to the NRC and found his fears of management retaliation to be unjustified. (Tr. 1031)

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Church stated that Mandreger also related to him how Gardner had questioned his whereabouts on January 22 even though he believed he was performing his job and was being a conscientious employee. (Tr. 1004) According to Church, Mandreger mentioned that his supervisors had previously questioned his whereabouts; a claim which is unsupported by the record. (Tr. 1004-05) Church testified that he did not ask Mandreger about these prior incidents because Church had heard from other employees in the Stores Division that management often questioned employees whereabouts in an effort to confuse them and apply pressure to them. (Tr. 1005) Church stated that seven or eight employees in the Stores Division had expressed to him their dissatisfaction with John Sutka and the mind games he played on his employees. (Tr. 1016)

Church testified that after his conversation with Mandreger, Mandreger calmed down. (Tr. 1005- 06) However, Mandreger insisted on going to the NRC resident before going

to the meeting in Shafer's office where Church was to represent him. (Tr. 1006) Church accompanied Mandreger to the NRC office and heard Mandreger recount the incident with Gardner to Mike Parker, the NRC resident official. (Tr. 1006) Church stated that Mandreger expressed to Parker his fear that the company was trying to fire him because of the NRC complaint. (Tr. 1006) Church also admitted that an unaccounted absence could result in disciplinary action. (Tr. 1031-32) However, Church believed that Mandreger was being too protective and building his defense before one was needed. (Tr. 1007, 1032)

Church testified that by the time of the meeting in Shafer's office, Mandreger had calmed down significantly, but he still was distrustful of the company. (Tr. 1012) Church was impressed by Mandreger's professionalism in the meeting. (Tr. 1013) Church, recalled that Gardner apologized for questioning Mandreger's whereabouts. (Tr. 1013) Shafer then reprimanded Mandreger for yelling in his face during a previous discussion (ie., January

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12) and yelling at Gardner in his office a couple of hours earlier. (Tr. 1014) Shafer told Mandreger that he would not tolerate his employees treating their supervisors in such a manner. (Tr. 1014) According to Church, the entire problem centered upon misunderstandings and misperceptions. (Tr. 1015) Church further explained that Shafer and Gardner wanted to work with Mandreger, but Mandreger had not yet had enough dealings with them, so he was treating them suspiciously based upon his experiences with prior management. (Tr. 1015)

Church stated that at the conclusion of the meeting, Shafer and Gardner instructed Mandreger to go home for the rest of the day and call in on Monday. (Tr. 1019) Church vaguely recalled some indication that Shafer was going to contact EAP and make an appointment for Mandreger. (Tr. 1020-21) Church testified that, in his opinion, Mandreger's supervisors were acting "within the appropriate realms" in referring Mandreger to EAP. (Tr. 1022) Church acknowledged that EAP is supposed to be a confidential counseling service; however, he has found that is not always the case. (Tr. 1035)

Church testified that on Monday morning following the meeting, he contacted Mandreger at home to remind him to call work, according to Shafer's instructions. (Tr. 1023-24) Church said that when he spoke to Mandreger, Mandreger sounded relaxed and seemed cooperative. (Tr. 1024, 1036)

Gary Jamison

Gary Jamison is employed by Detroit Edison as an equipment operator. (Tr. 1061) He also holds two union offices, one as Vice-President of the local union and the other as the Union Chairman of the Stores bargaining unit. (Tr. 1062)

Jamison recalled that Mandreger contacted him by telephone after he had been removed from the sits on Friday, January 22. (Tr. 1066) Jamison testified that Mandreger informed him that he thought his supervisors were retaliating against him for

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filing a NRC complaint. (Tr. 1066) According to him, Mandreger asserted that he was going to file a lawsuit because of this harassment. (Tr. 1067) Mandreger also mentioned that he had gone to the Michigan State Police. (Tr. 1066) Finally, Jamison recounted that Mandreger informed him that he had some information that would blow the lid off of the national presidential elections. (Tr. 1067-68) [Mandreger testified that he did not recall making this statement to Jamison, but he did not deny it. (Tr. 342)] According to Jamison, Mandreger seemed upset and excited during their conversation. (Tr. 1067)

Jamison testified that his next conversation with Mandreger occurred after Dr. Smith had informed Mandreger that he had a mental illness. (Tr. 1068) Jamison stated that Mandreger disagreed with Smith's diagnosis. (Tr. 1068) Mandreger informed Jamison that he was going to get some outside medical opinions. (Tr. 1068) Jamison testified that Mandreger indicated he was fine and should be able to return to work. (Tr. 1068)

Jamison stated that he next contacted Mandreger to ask him to sign medical release forms so that management could obtain copies of Mandreger's psychological records. (Tr. 1069) Jamison testified that he was not aware that Mandreger had already submitted medical letters to Fermi indicating that he was able to return to work. (Tr. 1080-81) Jamison stated that Dick Martin, the Director of Union Relations for management, had not mentioned that letters from outside physicians had already been presented. (Tr. 1081)

Jamison related that after arrangements were made with Mandreger to sign the medical release forms at the union hall, Mandreger failed to show up. (Tr. 1069-70) Jamison said that he called Mandreger's home to ask him when he was coming. (Tr. 1070) According to him, Mrs. Mandreger explained that Mandreger was doing some work with his brother on the western side of Michigan. (Tr. 1070) About 3 days later, Jamison received a call from Mrs. Mandreger telling him that Mandreger had suffered a nervous breakdown. (Tr. 1071-72)

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Jamison testified that when Mandreger was released from the hospital, Mr. Martin informed him that Mandreger had been prescribed Lithium. (Tr. 1075) According to Jamison, Martin also stated that in the Medical Department's opinion, Mandreger was incapacitated from working at Fermi because of the medication. (Tr. 1075) [Jamison's testimony that the medical department would not authorize Mandreger's return to Fermi conflicts with Martin's testimony in which he stated that Jamison informed him that Mandreger did not want to return to Fermi. (Tr. 1438)] Jamison explained that under the

union's collective bargaining contract, if an employee is incapacitated from his regular job, then the company is charged with finding the employee another job that he is qualified to perform. (Tr. 1076) Jamison testified that such an effort was made for Mandreger. (Tr. 1076) He explained that he allowed Mandreger to take a position that had recently opened at the River Rouge Plant. (Tr. 1076) According to Jamison, he informed Mandreger of the position at the River Rouge Plant, and Mandreger expressed an interest in this job even though he indicated that he really wanted to return to Fermi 2. (Tr. 1077)

Richard Martin

Richard Martin is the Director of Union Relations for the Detroit Edison Company. (Tr. 1431) In this capacity, he is responsible for making sure that the labor agreements with Detroit Edison are fairly enforced. (Tr. 1432)

Martin testified that in late March, he became involved with the events relating to Mandreger. (Tr. 1433) At this time, Martin was informed that an outside specialist, Dr. Qadir, had diagnosed Mandreger as having a manic depression, but that Mandreger had several letters from other doctors indicating he was alright and could return to work. (Tr. 1433) Martin said that he was told to make sure that all the union contractual provisions were being followed. (Tr. 1433)

Martin explained that in his experience, it was

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unusual for an employee to gather four different doctors' opinions; usually there is one doctor's opinion from an employee conflicting with another doctor's opinion from the employer. (Tr. 1448) Martin further stated that upon consulting Dr. Syed, Dr. Smith's supervisor, about these conflicting medical opinions, Dr. Syed explained that Mandreger's condition was one that could quickly fluctuate from normal to abnormal, and thus, it was possible to have so many favorable evaluations and one unfavorable evaluation. (Tr. 1448- 49)

Martin acknowledged that when he became involved with Mandreger's situation, Mandreger was running out of paid sick leave. (Tr. 1444) Martin further explained that once an employee's paid sick leave has expired, then the employee is placed on an illness leave of absence. (Tr. 1443) According to Martin, an illness leave of absence is an unpaid leave, even though the employee is still considered an active employee and still receives all the benefits, including insurance, accorded to him under the collective bargaining agreement. (Tr. 1443) Martin surmised that Mandreger's paid sick leave expired on March 22, although Mandreger was not notified until April 18, 1988 that he had been placed on medical leave. (Tr. 1442-43)

Martin testified that following this meeting with management in late March, he contacted Gary Jamison, the Bargaining Chairman for Mandreger's unit, to discuss resolving this conflict in medical opinions. (Tr. 1435) Martin stated that he was not aware of anything that had transpired between the company and Mandreger prior to late March. (Tr. 1451) Martin said that he suggested to Jamison that Mandreger execute a medical release so that the doctors involved could communicate with one another. (Tr. 1435-36) Martin recalled that he also suggested that Mandreger be re-evaluated by Dr. Qadir. (Tr. 1436) Martin admitted, however, that as he understood the situation, no one was insisting upon Mandreger revisiting Dr. Qadir; instead this avenue was being discussed as a mere possibility. (Tr. 1447)

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Marlin recounted that Jamison told him that Mandreger was reluctant to see Dr. Qadir again. (Tr. 1436) According to Mr. Martin, Mr. Jamison asked about the possibility of sending Mandreger to another specialist. (Tr. 1436) Martin said that he subsequently talked with Dr. Syed, the Medical Director, and received authorization for Mandreger to see another doctor. (Tr. 1436) Martin testified that he then notified Jamison of this fact. (Tr. 1436) Martin stated that Jamison later informed him that Mandreger wanted to speak with his attorney before consulting another psychiatrist. (Tr. 1436) However, Jamison did say that Mandreger agreed to sign the necessary medical releases. (Tr. 1436-37) Martin testified that it was shortly after this conversation that he learned from Jamison that Mandreger had been hospitalized at Coldwater. (Tr. 1437)

Martin explained that his next contact with Mandreger's situation occurred in late April when Mandreger had expressed his desire to return to work to Mr. Shafer. (Tr. 1437) Martin testified that he spoke with Dr. Smith who indicated that Mandreger should not return to Fermi 2. (Tr. 1438) Martin relayed this information to Jamison. (Tr. 1438) According to Martin, Jamison later contacted him and informed him that Mandreger wanted to return to some other facility besides Fermi. (Tr. 1438) Martin stated that in mid-May, he and Jamison had effected a transfer of Mandreger to the River Rouge Plant. (Tr. 1439) Martin explained that Mandreger's position at River Rouge was as a tool and warehouseman which is at the same pay grade as the position that he occupied at Fermi 2. (Tr. 1439-40)

In Martin's opinion, Mandreger received all the benefits he was entitled to receive under the collective bargaining agreement. (Tr. 1440) Marlin also noted that no grievances were filed as a result of Mandreger's placement. (Tr. 1440)

DISCUSSION

The controlling law for the 6th Circuit in which this case arises is the interpretation of 42 U.S.C.

Section 5851 by the court in *DeFord v. Secretary of Labor*, 700 F.2d 281 (6th Cir. 1983). The elements set forth in *DeFord* are:

1. that the party charged with discrimination is an employer subject to the (Energy Reorganization Act of 1974 or Atomic Energy Act of 1954);
2. that the complaining employee was discharged or otherwise discriminated against with respect to his compensation, terms, conditions, or privileges of employment; and,
3. that the alleged discrimination arose because the employee participated in an NRC proceeding under either the Energy Reorganization Act of 1974 or the Atomic Energy Act of 1954.

Id. at 286.

The court in *DeFord* cited *Consolidated Edison Co. v. Donovan*, 673 F.2d 61, 62 (2d Cir. 1982), regarding the standard for allocation of the burden of proof. The court stated this test as "once [the employee-complainant] offers evidence from which the inference of illegal discrimination could be drawn, [the employer then] ha[s] an opportunity to show that the actions it took with respect to [the employee] were based upon legitimate non- discriminatory reasons." *Id.*, at 285. The court also indicated that in construing the whistleblower provisions of the Energy Reorganization Act, one should look to precedent established under the National Labor Relations Act (29 U.S.C. Section 151 et seq.).

The *DeFord* court noted that *Consolidated Edison* referred to and used the *Weight Line* and *Mt. Healthy* tests. *Consolidated Edison*, at 62. In *NLRB v. Wright Line, A Division of Wright Line*, 662 F.2d 899 (1st Cir. 1981), *cert. denied*, 455 U.S.

989 (1982), the Court of Appeals for the First Circuit adopted the NLRB's new standard for cases where both legitimate and illegitimate motives exist. (The NLRB's new approach was based upon *Mount Healthy City School District Board of Education v. Doyle*, 429 U.S. 274 (1977).) This rule stated that the complainant must first make a *prima facie*, showing sufficient to support the inference that the employer's opposition to protected conduct was a motivating factor in the employer's decision. Once this is established, the burden then shifts to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct. *Wright Line*, at 902. Once the burden shifts, the employer must prove his burden by the preponderance of the evidence. *Id.* at 903. This test was later approved by the Supreme Court in *NLRB v. Transportation Management Corp.*, 462 U.S. 393; 103 S.Ct. 2469 (1983).

More recently, the United States Supreme Court addressed the burden of proof standards in discrimination cases arising under Title VII of the Civil Rights Act of 1964

(78 Stat. 253, as amended, 42 U.S.C. Section 2000e et seq.) In *Price Waterhouse v. Hopkins*, U.S. , 57 LW 4469, the Court said:

In *Transportation Management*, we upheld the NLRB's interpretation of Section 10(c) of the National Labor Relations Act, which forbids a court to order affirmative relief for discriminatory conduct against a union member "if such individual was suspended or discharged for cause." 29 U.S.C. Section 160(c). The Board had decided that this provision meant that once an employee had shown that his suspension or discharge was based in part on hostility to unions, it was up to the employer to prove by a preponderance of the evidence that it would have made the same decision in the absence of this impermissible motive. In

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such a situation, we emphasized, "[t]he employer is a wrongdoer; he has acted out of a motive that is declared illegitimate by the statute. It is fair that he bear the risk that the influence of legal and illegal motives cannot be separated, because he knowingly created the risk and because the risk was created not by innocent activity but by his own wrongdoing." 462 U.S., at 403.

We have, in short, been here before. Each time, we have concluded that the plaintiff who shows that an impermissible motive played a motivating part in an adverse employment decision has thereby placed upon the defendant the burden to show that it would have made the same decision in the absence of the unlawful motive. Our decision today treads this well-worn path.

Id. at 4475

In the Rules of Practice and Procedure for hearings before the Office of Administrative Law Judges at 29 C.F.R. Section 18.301 (based on Federal Rules of Evidence, Rule 301) it is provided that:

Except as otherwise provided for by Act of Congress or by rules or regulations prescribed by the administrative agency pursuant to statutory authority a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast.

The Rules of Practice and Procedure incorporates

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the framework established by the Supreme Court in *McDonnell Douglas v. Green*, 411 U.S. 792 (1973) and *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248 (1981), which contemplate that an individual alleging disparate treatment bears the burden of persuasion throughout litigation.

Before proceeding in the alternate directions set forth above, a complainant must first demonstrate a *prime facie* case that the alleged wrongdoer was motivated in taking an adverse action against the employee at least in part by unlawful considerations.

In the case *sub judice*, the Complainant has fulfilled the first two elements of the test set forth in *Deford, supra*. Specifically, the evidence shows, and I find, that Detroit Edison is an employer subject to the Energy Reorganization Act, and that Detroit Edison took an adverse action against the Complainant with respect to his compensation, terms, conditions or privileges of employment when the Complainant was referred to EAP.

The third element, however, that the Respondent's actions were based in part on some prescribed consideration, is more difficult. There is no question in this case that Mandreger's expression of safety concerns and his ultimate complaint to the NRC constituted protected activity under the ERA. Moreover, there is no question that Detroit Edison was aware of Mandreger's report to the NRC and I so find. Mandreger made no secret of the fact that he had filed such a complaint. However, based on the record before me, I am not able to conclude that the referral of Mandreger to the EAP was at all motivated by his having engaged in any protected activities while employed at Fermi 2.

Most noticeable about Mandreger during the course of the trial, during which I was able to observe his demeanor and to listen to his testimony, was that he seemed to have a propensity to exaggerate or to embellish situations. Had the evidence in this case supported Mandreger's assertions of continual harassment, increased scrutiny

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of his work, or surveillance of his activities following his protected activities, then the result may have been different. However, Mandreger's case is built on a weak foundation of misperception, misunderstanding, supposition and "feelings" that he was being discriminated against. To be sure, Mandreger worked in an atmosphere where good management skills seemed to be lacking, especially under John Sutka. This may have been a stressor for Mandreger which eventually contributed in part to the manifestation of his diagnosed mental condition. But the exaggerated levels of harassment, intimidation, and surveillance that the Complainant would have me believe just are not present in the evidence before me. Rather, there are isolated incidents, spanning Mandreger's tenure at Fermi 2. Nothing more than disconnected unrelated events which apparently left Mandreger with "feelings" that he was the victim of unlawful discrimination. Mandreger believed that there was a conspiracy against him to rid him from his employment at Fermi 2. (Tr. 300-02) However, it is inconceivable to me that a conspiracy of such magnitude could exist or would even be worth the effort by an employer to divest itself of a single employee who filed one complaint with the NRC during his employment at Fermi 2. Such a finding would have to include most, if not all, of Mandreger's managers, EAP personnel and outside consulting physicians. In short, there is not a scintilla of evidence in this record which would support Mandreger's conspiracy theory. Rather, it

appears to me that his reasoning in this regard is a continuing manifestation of his bipolar affective disorder.

The medical opinion evidence in this case is conflicting. The reports of those physicians that found Mandreger's mental illness to be the direct result of work stressors, namely, harassment and intimidation as a consequence of this protected activity, were based on gross exaggerations of his actual working conditions. Thus, I find that such reports are of little probative value. Simply stated, the reports were based on Mandreger's version of

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events and thus lacked objectivity.

On the other hand, medical reports that totally discounted work activities as a stressor are also of little help in determining whether there has been a violation of the law. Far more probative was the testimony of coworkers and others with no particular interest in this case. Testimony of Mandreger going to the State Police and stating that he was working "under cover" for the NRC and FBI (Tr. 222-25), that he would go to Channel 7 and "expose" Detroit Edison (Tr. 321), and that he had information that would blow the lid off the presidential elections portrays a more accurate picture of what was going on with Mandreger. (Tr. 340) All of these incidents tend to underscore his proclivity to exaggerate events and thus ultimately chip away at the foundation of his complaint.

Moreover, there is no evidence direct or inferential, that Mandreger was sent to EAP for any reason other than his conduct on January 12, and again on January 22. His reactions to situations that were seemingly resolved were simply out of proportion to the events in question. His outbursts, especially that on January 22 were entirely inappropriate to the circumstances. Although Shafer, in my, opinion, lacked candor in denying that he was aware of Mandreger's NRC report, I can find little fault with his decision to refer Mandreger to the EAP. Even had Shafer been inclined at some point to take some unlawful adverse action against Mandreger, Mandreger's unwarranted outburst certainly gave cause for concern wholly aside from any protected activities. Alleged discriminates do not enjoy an unfettered right to engage in any impermissible activity and then to avoid the consequences thereof simply because they may have also engaged in a protected activity.

Having fully considered all the evidence in this case, I hereby make the following:

RECOMMENDED CONCLUSIONS OF LAW

1. The Respondent owns and operates a nuclear

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power plant under license from the Nuclear Regulatory Commission and is subject to the provisions of the Energy Reorganization Act including the whistleblower protection provisions of the Act at 42 U.S.C. Section 5851.

2. The Complainant and the Respondent are employee and employer, respectively, within the meaning of the Act as set forth in 42 U.S. Section 5851.

3. On or about December 4, 1988, the Complainant communicated to the NRC concerns regarding the presence of possibly contaminated equipment within the Complainant's tool crib work area. This communication was protected activity within the meaning of the Act.

4. Pursuant to the Act, it is unlawful for an employer to ". . . discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions or privileges of employment because the employee ..." engaged in activity protected by the Act.

5. Pursuant to implementing regulations of the Secretary of Labor, it is a violation of the Act if an employer ". . . intimidates, threatens, restrains, coerces, blacklists, discharges or in any other manner discriminates against any employee who has ..." engaged in activity protected under the Act, because an employee has engaged in protected activity. (See 29 CFR Section 24.2(b).) The acts of wrongful conduct alleged by the Complainant in this matter if so found to have occurred, are within the scope of employer conduct regulated by the Act.

6. Pursuant to the Federal labor policy, the Complainant's compensation, terms, conditions and privileges of employment are defined by the terms and provisions of a labor agreement negotiated and in effect between the respondent and the complainant's union, Local 223, Utility Workers Union of America, AFL-CIO, which labor agreement covers a bargaining unit which includes the Complainant.

7. This case does not raise issues of alleged wrongful discipline nor does the Complainant

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claim wrongful discharge from employment. With respect to Complainant's compensation, terms, conditions or privileges of employment, to the extent that they are defined, by the provisions of the labor agreement covering Complainant's employment, the Complainant neither claims nor does the evidence otherwise show, that Complainant has been deprived of his employment rights as set forth in the labor agreement.

8. By statute, and by regulation of the Secretary of Labor, the right to not be adversely treated through acts of intimidation, threats, coercion and the like because of protected

activity is deemed by operation of statute to be a condition and benefit of employment and as such, forms the framework for this litigation.

9. The Complainant has failed to present a *prima facie* case of discrimination under the Act:

(a) Verbal remarks of Sutka on or about December 4, 1987 were an expression of personal opinion.

(b) Gardner's comments of on or about December 9, 1987 are similarly legitimate statements of the employer's view of how employees should more properly present safety concerns. Such comments in the context of this case were not wrongful acts of harassment.

(c) As a matter of law, allegations of over-scrutinization or surveillance of Mandreger's work by supervisors are factually unsupported. No evidence was presented which would permit an inference that any alleged over-scrutinization or surveillance was causally related to Mandreger's protected activity.

(d) Rotation of Mandreger's work assignment on or about December 20 was not shown to be causally related to his protected activity, the facts showing that

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others, similarly situated, were equally rotated without regard to matters involving protected activity.

(e) Alleged statements by employee Greg Osmulski, as a matter of law, were not acts of harassment, but were, rather, statements of opinion by a non-supervisory employee.

(f) Alleged statements by supervisor Gardner in a mid-December meeting were not, as a matter of law, acts of harassment, but were rather legitimate management inquiries in the course of an information/instructional meeting. To the extent that the Complainant "feels" singled out or otherwise uncomfortable does not thereby raise such conduct to the level of harassment. Further, the conduct is otherwise legitimate employer conduct given undisputed record testimony that the Complainant had identified himself as being particularly unsure as to whether safety levels and safety procedures had been established and met. The management statements at issue, therefore, were in direct response to the legitimate needs and inquiries of the Complainant.

(g) Complainant's testimony which attributes statements to Mr. Shafer on or about January 12, regarding Complainant's going to the NRC lack credibility. In this regard, the evidence also fails to establish any animus whatsoever on the part of Shafer, against employees in general, or the Complainant in particular, for exercising rights protected by the Act.

(h) Mandreger's claim that he was accused of being absent from work on or about January 22 does not amount to an unlawful act of harassment. The facts do not directly or by inference show that

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Garner's inquiry was in any way causally related to the Complainant's protected activity.

(i) The Complainant's referral to EAP and his subsequent diagnosis of disability were the product of the Complainant exhibiting aberrant behavior on the job. There is no evidence that demonstrates that the medical referral was in any way related to the Complainant having engaged in protected activity.

10. Neither by direct nor by inferential evidence has the Complainant established that his mental condition, which bars him from continued employment at Fermi 2, was proximately caused by his engaging in protected activity. To the contrary, a preponderance of the evidence shows that Complainant's mental condition is a product of physiological (ie. brain chemistry) and hereditary factors. Further, a preponderance of the evidence, shows that acts of aberrant behavior due to the Complainant's medical condition were triggered by traumatic private and family events and/or perhaps factors in the work place which have not otherwise been shown to be causally related to the Complainant's protected activity.

11. The Complainant's allegation that his resignation from Detroit Edison on August 23, 1988, during the course of the hearing was tantamount to a constructive discharge based on ongoing unlawful activity of the Respondent is hereby found to be without merit for failure of proof.

RECOMMENDED ORDER

It is recommended that the complaint of Jamie H. Mandreger be DISMISSED. It is further recommended that the parties bear their own costs of litigation.

[ENDNOTES]

¹ In this Decision, "Admin. Ex." refers to the Administrative exhibits, "Compl. Ex." refers to the Complainant's exhibits, and "Resp. Ex." refers to the Respondent's exhibits and "Tr." refers to the transcript of the hearing.